Suozzi
Swalwell (CA)
Takano
Thompson (CA)
Thompson (MS)
Titus
Tonko
Torres
Tsongas
Vargas
Veasey
Vela
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters, Maxine
Watson Coleman
Welch
Wilson (FL)
Yarmuth

NOT VOTING—9

Aderholt
Bridenstine
Cuellar
Hurd
Johnson, E. B.
Mitchell
Pocan
Roybal-Allard
Sanford

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining.

□ 1334

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

VETERANS CRISIS LINE STUDY ACT OF 2017

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill (H.R. 4173) to direct the Secretary of Veterans Affairs to conduct a study on the Veterans Crisis Line, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and pass the bill, as amended.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 420, nays 0, not voting 12, as follows:

[Roll No. 618]

YEAS—420

Abraham
Adams
Aderholt
Aguilar
Amash
Amodei
Arrington
Babin
Bacon
Banks (IN)
Barletta
Barr
Barragán
Barton
Bass
Beatty
Bera
Bergman
Beyer
Biggs
Bilirakis
Bishop (GA)
Bishop (MI)
Bishop (UT)
Black
Blackburn
Blum
Blumenauer
Blunt Rochester
Bonamici
Bost
Boyle, Brendan F.
Brady (PA)
Brady (TX)
Brat
Brooks (AL)
Brooks (IN)
Brown (MD)
Brownley (CA)
Buchanan
Buck
Bucshon
Budd
Burgess
Bustos
Butterfield
Byrne
Calvert
Capuano
Carbajal
Cárdenas
Carson (IN)
Carter (GA)
Carter (TX)
Cartwright
Castor (FL)
Castro (TX)
Chabot
Cheney
Chu, Judy
Cicilline
Clark (MA)
Clarke (NY)
Clay
Cleaver
Clyburn
Coffman
Cohen
Cole
Collins (GA)
Collins (NY)
Comer
Comstock
Conaway
Connolly
Conyers
Cook
Cooper
Correa
Costa
Costello (PA)
Courtney
Cramer
Crawford
Crist
Crowley
Culberson
Cummings
Curbelo (FL)
Davidson
Davis (CA)
Davis, Danny
Davis, Rodney
DeFazio
DeGette
Delaney
DeLauro
DelBene
Demings
Denham
Dent
DeSantis
DeSaulnier
DesJarlais
Deutch
Diaz-Balart
Dingell
Doggett
Donovan
Doyle, Michael F.
Duffy
Duncan (SC)
Duncan (TN)
Dunn
Ellison
Emmer
Engel
Eshoo
Espaillat
Estes (KS)
Esty (CT)
Evans
Farenthold
Faso
Ferguson
Fitzpatrick
Fleischmann
Flores
Fortenberry
Foster
Foxx
Frankel (FL)
Frelinghuysen
Fudge
Gabbard
Gaetz
Gallagher
Gallego
Garamendi
Garrett
Gianforte
Gibbs
Gohmert
Gomez
Gonzalez (TX)
Goodlatte
Gosar
Gottheimer
Gowdy
Granger
Graves (GA)
Graves (LA)
Graves (MO)
Green, Al
Green, Gene
Griffith
Grijalva
Grothman
Guthrie
Gutiérrez
Hanabusa
Handel
Harper
Harris
Hartzler
Hastings
Heck
Hensarling
Herrera Beutler
Hice, Jody B.
Higgins (LA)
Higgins (NY)
Hill
Himes
Holding
Hollingsworth
Hoyer
Hudson
Huffman
Huizenga
Hultgren
Hunter
Issa
Jackson Lee
Jayapal
Jeffries
Jenkins (KS)
Jenkins (WV)
Johnson (GA)
Johnson (LA)
Johnson (OH)
Johnson, Sam
Jones
Jordan
Joyce (OH)
Kaptur
Katko
Keating
Kelly (IL)
Kelly (MS)
Kelly (PA)
Kennedy
Khanna
Kihuen
Kildee
Kilmer
Kind
King (IA)
King (NY)
Kinzinger
Knight
Krishnamoorthi
Kuster (NH)
Kustoff (TN)
Labrador
LaHood
LaMalfa
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latta
Lawrence
Lawson (FL)
Lee
Levin
Lewis (GA)
Lewis (MN)
Lieu, Ted
Lipinski
LoBiondo
Loebsack
Lofgren
Long
Loudermilk
Love
Lowenthal
Lowey
Lucas
Luetkemeyer
Lujan Grisham, M.
Luján, Ben Ray
Lynch
MacArthur
Maloney, Carolyn B.
Maloney, Sean
Marchant
Marino
Marshall
Massie
Mast
Matsui
McCarthy
McCaul
McClintock
McCollum
McEachin
McGovern
McHenry
McKinley
McMorris Rodgers
McNerney
McSally
Meadows
Meehan
Meeks
Meng
Moolenaar
Mooney (WV)
Moore
Moulton
Mullin
Murphy (FL)
Nadler
Napolitano
Neal
Newhouse
Noem
Nolan
Norcross
Norman
Nunes
O'Halleran
O'Rourke
Olson
Palazzo
Pallone
Palmer
Panetta
Pascrell
Paulsen
Payne
Pearce
Pelosi
Perlmutter
Perry
Peters
Peterson
Pingree
Pittenger
Poe (TX)
Poliquin
Polis
Posey
Price (NC)
Quigley
Raskin
Ratcliffe
Reed
Reichert
Renacci
Rice (NY)
Rice (SC)
Richmond
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rokita
Rooney, Francis
Rooney, Thomas J.
Ros-Lehtinen
Rosen
Ross
Rothfus
Rouzer
Royce (CA)
Ruiz
Ruppersberger
Rush
Russell
Rutherford
Ryan (OH)
Sánchez
Sarbanes
Scalise
Schakowsky
Schiff
Schneider
Schrader
Schweikert
Scott (VA)
Scott, Austin
Scott, David
Sensenbrenner
Serrano
Sessions
Sewell (AL)
Shea-Porter
Sherman
Shimkus
Shuster
Simpson
Sinema
Sires
Slaughter
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Smucker
Soto
Speier
Stefanik
Stewart
Stivers
Suozzi
Swalwell (CA)
Takano
Taylor
Tenney
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiberi
Tipton
Titus
Tonko
Torres
Trott
Tsongas
Turner
Upton
Valadao
Vargas
Veasey
Vela
Velázquez
Visclosky
Wagner
Walberg
Walden
Walker
Walorski
Walters, Mimi
Walz
Wasserman Schultz
Waters, Maxine
Watson Coleman
Weber (TX)
Webster (FL)
Welch
Wenstrup
Westerman
Williams
Wilson (FL)
Wilson (SC)
Wittman
Womack
Woodall
Yarmuth
Yoder
Yoho
Young (AK)
Young (IA)
Zeldin

NOT VOTING—12

Allen
Bridenstine
Cuellar
Franks (AZ)
Hurd
Johnson, E. B.
Messer
Mitchell
Pocan
Roskam
Roybal-Allard
Sanford

□ 1340

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. FRANKS of Arizona. Mr. Speaker, I was unavoidably detained. Had I been present, I would have voted "yea" on rollcall No. 618.

PERSONAL EXPLANATION

Mr. SANFORD. Mr. Speaker, I was detained this afternoon at Georgetown University Hospital as my youngest son Blake broke his nose last evening and I was attending to him. Had I been present, I would have voted "yea" on rollcall No. 616, "yea" on rollcall No. 617, and "yea" on rollcall No. 618.

HYDROPOWER POLICY MODERNIZATION ACT OF 2017

GENERAL LEAVE

Mr. UPTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include in the RECORD extraneous material on H.R. 3043.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 607 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 3043.

The Chair appoints the gentleman from Illinois (Mr. HULTGREN) to preside over the Committee of the Whole.

□ 1343

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 3043) to modernize hydropower policy, and for other purposes, with Mr. HULTGREN in the chair.

The Clerk read the title of the bill.

The Acting CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Michigan (Mr. UPTON) and the gentleman from Illinois (Mr. RUSH) each will control 30 minutes.

The Chair recognizes the gentleman from Michigan.

□ 1345

Mr. UPTON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong support of H.R. 3043, the Hydropower

Policy Modernization Act of 2017. This legislation, introduced by my friend and colleague from the Energy and Commerce Committee, CATHY MCMORRIS RODGERS, is an important step toward modernizing our energy infrastructure, creating jobs, and, yes, strengthening our economy. I want to thank her for her commitment to this issue.

The committee went through regular order with the bill. We held two hearings on background issues, one legislative hearing, and both subcommittee and full committee markups, where the bill was agreed to by a voice vote. Following the markups, bipartisan committee staff held more meetings to hear from over a dozen Tribal governments to gather additional views.

I think that the resulting bill strikes a careful balance. Changes were made to increase State and Tribal consultation requirements, and a very strong savings clause was added to protect States' authorities under the Clean Water Act.

Hydropower is an essential component of an all-of-the-above energy strategy for this country. Hydropower is clean; it is renewable and affordable base load power. It is good for consumers' electricity bills, and it is also good for jobs, which is why labor is strongly supportive of this legislation.

There is a tremendous opportunity to expand hydropower production on existing nonpowered dams. Less than 3 percent of the dams in the U.S., approximately 2,200 dams, produce electricity. There are also opportunities to improve the process for the projects that are due for relicensing. By 2030, over 400 existing projects, with almost 19,000 megawatts of capacity, will begin the relicensing process, and these projects, in fact, may be at risk.

Fixing the licensing process would also improve safety. Upgrading the performance of existing dams and utilizing existing nonpowered dams, canals, and conduits would enable investments, which would address aging dams and, yes, improve overall safety.

The duration, complexity, and uncertainty of the hydropower licensing process creates significant challenges that prevent investments that would create jobs and benefit consumers. The licensing process for a new hydropower development project can last over a decade and costs tens of millions of dollars—significantly longer than the time that it takes to construct a natural gas-fired power plant of the same size.

This legislation, H.R. 3043, would level the playing field by modernizing the permitting process without compromising environmental protections. The bill improves administrative efficiency, accountability, and transparency. It requires balanced, timely decisionmaking and reduces duplicative oversight from the multiple Federal agencies that review hydropower applications.

This bill brings certainty and timeliness to the licensing process by enhancing consultation with Federal, State, and local agencies and Indian Tribes, and it requires FERC to establish a process for setting the schedule for review. H.R. 3043 streamlines and improves procedures to identify scheduling issues, propose licensing conditions, and resolve disputes.

This bill also contains provisions to expedite the approval process for an amendment to a license for a qualifying hydro project upgrade. Without the hydropower licensing improvements in this bill—without them—we risk losing investment opportunities in new hydropower infrastructure which would benefit consumers with affordable electricity and expand the use of clean, renewable energy.

Again, I thank my colleagues for their work, and the great staff, on this important piece of legislation.

Mr. Chairman, I reserve the balance of my time.

HOUSE OF REPRESENTATIVES, COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC, October 31, 2017.

Hon. GREG WALDEN,
Chairman, Committee on Energy & Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I write concerning H.R. 3043, the ''Hydropower Policy Modernization Act of 2017.'' This bill contains provisions within the jurisdiction of the Committee on Oversight and Government Reform. As a result of your having consulted with me concerning the provisions of the bill that fall within our Rule X jurisdiction, I agree to forgo consideration of the bill so the bill may proceed expeditiously to the House floor.

The Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 3043 at this time we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and we will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues that fall within our Rule X jurisdiction. Further, I request your support for the appointment of conferees from the Committee on Oversight and Government Reform during any House-Senate conference convened on this or related legislation.

Finally, I would appreciate your response to this letter confirming this understanding and ask that a copy of our exchange of letters on this matter be included in the Congressional Record during floor consideration thereof.

Sincerely,

TREY GOWDY.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, November 1, 2017.

Hon. Trey Gowdy,
Chairman, Committee on Oversight and Government Reform, Washington, DC.

DEAR CHAIRMAN GOWDY: Thank you for your letter concerning H.R. 3043, Hydropower Policy Modernization Act of 2017. As you note, this bill contains provisions within the jurisdiction of the Committee on Oversight and Government Reform, and appreciate your agreement to forgo consideration of the bill so the bill may proceed expeditiously to the House floor.

I agree that by foregoing consideration of H.R. 3043 at this time, the Committee on Oversight and Government Reform does not waive any jurisdiction over the subject matter contained in this or similar legislation, and you will be appropriately consulted and involved as the bill or similar legislation moves forward so that you may address any remaining issues that fall within your Rule X jurisdiction. Further, I will support the appointment of conferees from the Committee on Oversight and Government Reform during any House-Senate conference convened on this or related legislation.

Finally, a copy of our exchange of letters on this matter will be included in the Congressional Record during floor consideration thereof.

Sincerely,

GREG WALDEN,
Chairman.

Mr. RUSH. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong opposition to H.R. 3043, the Hydropower Policy Modernization Act of 2017.

Mr. Chairman, while Members on both sides of the aisle support hydropower, unfortunately, the bill before us today is deeply flawed and will not modernize or improve the hydropower licensing process. Instead, Mr. Chairman, H.R. 3043 would place private profits above the public interest by giving priority of our public waterways to industry in order to generate power and profits over and above the rights and the interests of Native Tribes or farmers or fishermen, boaters, and other stakeholders who also rely on these public rivers and streams.

Mr. Chairman, it is very important for us to remember that hydroelectric licenses can span between 30 and 50 years, and, under existing law, a license holder can be granted automatic yearly extensions in perpetuity without even having to reapply.

Mr. Chairman, this issue is far too important for us not to get it right this time. And what does H.R. 3043 actually do?

This bill will make the Federal Energy Regulatory Commission, FERC, the lead agency over the licensing process and will require Native Tribes, the States, and other Federal resource agencies to pay deference to the Commission, even in areas where FERC has absolutely no expertise or statutory authority, including on issues regarding agricultural water use, drinking water protection, fisheries management, and recreational river use. How absurd, Mr. Chairman.

Additionally, Mr. Chairman, H.R. 3043 would expand and alter the trial-type hearing provisions on the Federal Power Act, essentially rigging the process in favor of industry by providing multiple new entry points to challenge conditions designed by Federal resource agencies.

Mr. Chairman, the threat of these timely and costly hearings may be used to coerce agencies to propose weaker conditions, and, at the same time, this bill also shifts the venue for these hearings to FERC, which is another very obvious handout and handover to industry.

Mr. Chairman, in testimony before the Energy and Commerce Committee, we heard, repeatedly, that a major

cause for licensing delays was due to incomplete applications that do not include all the pertinent information that is necessary to issue a decision.

Mr. Chairman, H.R. 3043 does nothing, absolutely nothing, to address this very, very serious issue. In fact, this bill will implement strict timelines on Federal resource agencies, States, and Tribes, but does not require applicants to submit all of their information to these agencies before the clock actually starts ticking.

Mr. Chairman, FERC, itself, the very agency that will be charged with implementing this grossly bad bill, FERC, itself, disputed claims that this bill would streamline the licensing process, noting that the legislation ''could increase the complexity and the length of the licensing process.'' These are FERC's words, FERC's words before the committee.

Mr. Chairman, we cannot allow hydropower facilities to claim a monopoly over our public waterways without mitigating the negative impacts of these facilities on others who rely on these resources and without, at the same time, without complying with modern environmental laws.

H.R. 3043, Mr. Chairman, is opposed by States, opposed by the Native Tribes, opposed by the outdoor recreation industry and by more than 150 national and local environmental organizations.

Mr. Chairman, it is for all of these reasons that I, too, stand in concert and side by side with Native Tribes, the outdoor recreation industry, and the other 150 national and local environmental organizations. It is for these reasons that I, too, must oppose this bill, and I urge all of my colleagues to do the same.

Mr. Chairman, I reserve the balance of my time.

Mr. UPTON. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Washington State (Mrs. MCMORRIS RODGERS), the author of this legislation.

Mrs. MCMORRIS RODGERS. Mr. Chairman, I appreciate all of the work that has gone into this legislation, and I rise in support and urge support of the Hydropower Policy Modernization Act of 2017.

Hydropower serves as the Nation's largest source of clean, renewable, reliable, and affordable energy. In my home State of Washington, it is roughly 70 percent of our electricity that comes from hydropower. It is one of the reasons that we enjoy some of the lowest electricity rates in the country.

Only 3 percent of the dams produce electricity, and there is room for tremendous potential to increase production of this renewable energy resource. In fact, we could double hydropower production and create an estimated 700,000 new jobs without building a single new dam, simply by updating the technology in our existing infrastructure and streamlining the relicensing process. But we must reduce the regulatory burden to allow this process to move forward.

This legislation seeks to streamline the relicensing process in an inclusive and environmentally friendly way. On average, it only takes 18 months to authorize or relicense a new natural gas facility—18 months—but it can take up to 10 years or longer to license a new hydropower project or relicense an existing facility—10 years.

Right now, it can be extremely costly and an uncertain process to relicense an existing dam or license a new dam. Investors are pursuing other base load sources of energy because of the current regulatory process. I want to encourage these investments so that we can support and expand renewable, carbon-free hydropower.

As I understand it, hydropower is well-supported by my colleagues, but many think we are tipping the scales in favor of this source.

First, I would like to define industry. We are hearing a lot about industry on the other side.

In eastern Washington, many of these dams are owned by small PUDs who pass on all of the costs to the ratepayers. These costs are delivered to the people of eastern Washington and throughout the United States. These are not major corporations.

I have also heard that we are lowering environmental standards during the licensing process for Tribes and States. At the request of the Western Governors' Association, we added language to clarify that nothing in this bill—nothing in this bill—will touch the Federal Water Pollution Control Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Rivers and Harbors Appropriation Act, or the National Historic Preservation Act.

I have also heard that we did not allow Tribes and States to testify on this bill. I struggle with these comments. This bill has gone through regular order. We have held multiple hearings. We had a member from the Standing Rock Sioux Tribe on one of the panels. It passed out of committee with a voice vote because concerns were raised from the Tribes, and we committed to sitting down and working with the Tribes to attempt to reach some language. I am proud of our efforts in that regard, and I am greatly disappointed that, at the end of the day, the Tribes did not come to an agreement on the legislation.

□ 1400

Although we weren't able to reach that resolution, we do protect the integrity of this legislation.

Licenses are complex, but there is no excuse for a process to take 10 years. It is time to update the approval process and make hydropower production easier and less costly without sacrificing environmental review. That is exactly what the Hydropower Policy Modernization Act of 2017 will do.

Specifically, my legislation designates FERC as the lead agency for the purpose of coordinating all applications of Federal authorizations, and establishes coordinated procedures for the licensing of hydropower projects.

By designating FERC as the lead when coordinating with agencies, States, and Tribes, there will be added transparency and collaboration. This added certainty in the relicensing process will diminish the burden on resource agencies, help avoid unnecessary delays, and ultimately lower costs to my constituents.

My legislation also incentivizes capital-intensive projects like updating turbines or improving fish ladders. Right now, these upgrades are only included in the lifespan of a dam's license during the relicensing window.

Included in the legislation is an early action provision requiring FERC to include all protection, mitigation, and enhancement measures during the relicensing process. In addition, the legislation allows the timely and efficient completion of licensing procedures by minimizing the duplication of studies and establishing a program to compile a comprehensive collection of studies and data on a regional or basin-wide scale. At the same time, industry has the option to help pay for studies and staff resources to speed up the process.

As a co-chair of the Northwest Energy Caucus, I recognize and I am excited about the tremendous potential hydropower brings not just to my district in eastern Washington, but to the country. By utilizing currently untapped resources and unleashing American ingenuity, hydropower production will lower energy costs and help create jobs.

This bill is not about changing outcomes or environmental law. This bill is about speeding up the process and saving time and money.

Mr. Chair, I urge all of my colleagues to support clean American energy and to support the Hydropower Policy Modernization Act of 2017.

Mr. RUSH. Mr. Chair, I yield such time as he may consume to the gentleman from New Jersey (Mr. PALLONE), from the State that made such a significant and giant step last night to making our Nation a better nation, the ranking member of the full committee.

Mr. PALLONE. Mr. Chair, I thank Mr. RUSH, our ranking member of the subcommittee, for yielding.

Mr. Chair, I rise in strong opposition to H.R. 3043.

I support hydropower. It can deliver low-carbon, affordable power if it is well-sited and managed. But these facilities, which are licensed for 30 to 50 years, can do enormous harm to fisheries, agriculture, and recreational cultural resources if not properly overseen. The hydropower licensing process can be more efficient, but electric utilities should not be permitted to operate without license conditions that ensure other public interests are met.

As I look at H.R. 3043 and weigh it against the list of stakeholders with interests in the rivers and watersheds

that provide hydroelectric facilities their fuel, I see a bill that is unbalanced, regressive, and dangerous; that will harm farmers, fishermen, boaters, Tribes, and drinking water.

H.R. 3043 will allow private hydropower companies to use public water resources to generate power and profit, but without mitigating the negative impacts of their facilities on others who rely on our rivers, and without complying with modern environmental laws.

H.R. 3043, is a direct assault on States' rights, Tribal rights, and it undercuts major environmental laws, including the Clean Water Act, the National Environmental Policy Act, and the Endangered Species Act. It prioritizes the use of rivers for power generation above the needs of all other water uses, and it inserts the Federal Energy Regulatory Commission into decisions that it has no authority, experience, or expertise to make.

So what this bill will not do is speed up the licensing process. FERC testified before our committee that one of the causes of delay in the licensing process was the failure of the applicant to provide a complete application, yet this bill does nothing to ensure that an applicant provides one. It makes no sense to impose a deadline if there is no clearly defined starting point in the form of a completed application.

How can a State make a decision on a water quality certificate if the applicant hasn't submitted the information that State needs to make that decision?

While FERC requires applicants to submit a complete application on the matters over which it has direct responsibility, the Commission has many times denied a similar opportunity to State and Federal agencies with regard to matters where they have primacy. In fact, FERC has a history of merely consulting with other stakeholders while dismissing their concerns and failing to incorporate minimal resource protections into hydropower licenses.

As an example, FERC recently failed to impose a number of conditions the State of West Virginia included in its water quality certificate for a project on the Monongahela River. FERC did this in spite of the fact that West Virginia acted in a timely manner. West Virginia acted in accordance with its law and delegated responsibility under the Clean Water Act.

Yesterday, I sent a letter with several of my colleagues to FERC expressing concern over the process it used on this project.

This bill virtually ensures that type of situation will be repeated. Now, a project that is noncontroversial, supported by the State, is likely to be stalled by hearings and other possible litigation that could have been avoided.

Mr. Chair, the truth is that H.R. 3043 treats Federal agencies, State governments, and Indian Tribes as second class citizens in this process. FERC is required to consult with them, but consultation does not ensure they will get FERC's support to fulfill their missions.

In this bill, all of the discipline is applied to government agencies, but none to the applicant. This is especially true in the case of license renewals. Any license that wants to avoid new investments or operating conditions can certainly do so because FERC will grant them automatic annual license renewal for as many years as they need.

Another reason why this bill will not expedite hydroelectric licenses is because, rather than streamlining the process, H.R. 3043 greatly expands litigation opportunities, something that will increase the expense and time required to award a license. It does this by providing for a biased, costly trial-type hearing process to secure decisions in the utility's favor.

Current law allows a single opportunity to challenge an agency condition to avoid undue expense and delay in the licensing process. H.R. 3043 expands the opportunities to challenge agency decisions, allows multiple challenges, and moves the venue for these hearings.

Not even FERC thinks that this is a good idea. In fact, at our hearing on this bill, the Deputy Associate General Counsel of FERC advised the committee to either retain the existing trial-type hearing process or eliminate it altogether.

Well, that advice obviously fell on deaf ears because the bill puts the trial-type hearing process on steroids. In essence, the private hydro companies pick the venue, set the rules, and secure additional points in the license process to challenge conditions that Federal resource agencies or FERC seeks to impose on a license to protect public interests. FERC warned that this change would increase the expense, complexity, and the length of licensing process—hardly the traits you would associate with streamlining.

Ultimately, the bill is a bad bill because it is bad for Native Americans; it is bad for the environment; it is bad for recreation; it is bad for farmers and agriculture; and H.R. 3043 is bad for States, that will now find it much harder to protect water quality and manage the waters within their boundaries.

Maybe that is why the bill is opposed by States, Tribes, the outdoor recreation industry, and more than 150 national and local environmental organizations.

Opponents of the bill include the Western Governors' Association, the Southern States Energy Board, the National Congress of American Indians, the Environmental Council of the States, the Outdoor Alliance, the National Wildlife Federation, the American Rivers, Trout Unlimited, and the League of Conservation Voters, among many others.

Perhaps the ultimate condemnation comes from FERC, which, in testimony before our committee, disputed claims that the bill would streamline the licensing process, noting that the legislation ''could increase the complexity and length of the licensing process.''

Hydropower facilities are using our most precious resource: water.

I don't think it is too much to ask that facilities awarded long-term licenses and free fuel share the rivers with others.

Mr. Chair, I urge my colleagues to oppose the bill.

Mr. UPTON. Mr. Chair, I yield 1½ minutes to the gentleman from Virginia (Mr. GRIFFITH), a member of the Energy and Commerce Committee.

Mr. GRIFFITH. Mr. Chairman, hydropower is an essential component of an all-of-the-above energy strategy.

We have a tremendous opportunity to expand renewable hydropower production. However, without some much-needed licensing improvements, we risk losing investment opportunities in new hydropower infrastructure. In particular, closed-loop pumped storage hydro projects offer the opportunity to store energy for use when it is needed.

I have introduced separate legislation, H.R. 2880, with the goal of making the review process of these projects as efficient as possible. Both H.R. 3043 and H.R. 2880 will allow the Federal Energy Regulatory Commission to impose licensing conditions only as necessary to protect public safety, or that are reasonable, economically feasible, and essential to protect fish and wildlife resources.

I am excited about the possibility some are exploring to build these facilities in abandoned mine lands. This renewable energy solution for power could be a real benefit to our coal field regions in central Appalachia in the form of jobs, economic development, and energy security. I am proud of what we are doing here in an effort to make this happen.

Industry and labor groups alike support H.R. 3043 because a modern regulatory framework for hydro is good for jobs and good for consumers. The following groups have written in support of the bill:

The American Council on Renewable Energy, the International Brotherhood of Boilermakers, the International Brotherhood of Electrical Workers, the International Federation of Professional and Technical Engineers, and many others.

Mr. Chairman, I include in the RECORD the letter containing the names of supporters.

NOVEMBER 6, 2017.

The undersigned groups are writing to express strong support for H.R. 3043, the Hydropower Policy Modernization Act of 2017, and to request your vote as it is considered on the floor of the U.S. House of Representatives this week.

Hydropower is America's single largest provider of renewable electricity, making up almost one-half of all generation from renewable resources. Given that hydropower is an important source of domestic, emissions-free, flexible power needed to ensure consistent and reliable electric service, we must

look to preserve and protect our existing hydropower system and promote new expansion opportunities.

H.R. 3043 provides a framework that adds accountability and transparency, eliminates inefficiencies and redundancies, and unlocks innovation and advancements in technology and operations, while protecting environmental values, public participation, and all existing authorities of federal and state decision-makers in the licensing process

The current regulatory environment is placing hydropower at risk. The licensing process can result in both new and existing projects taking up to ten years or longer to receive their approvals. This not only creates uncertainty for project owners and developers alike, but burdens electricity customers with additional unnecessary costs and only delays important environmental measures that the industry, resource agencies, and the environmental community agreed upon during the licensing process and want to see deployed.

Additionally, the fleet of almost 2,200 hydropower projects across the country supports approximately 118,000 ongoing full-time equivalent jobs in operations and maintenance and 25,000 jobs in construction and upgrades. By maintaining our existing fleet and supporting growth in the sector, the hydropower industry could support close to 200,000 jobs. Further local economic development in other industries is also spurred due to access to affordable electricity from hydropower projects. However, we will not realize the full measure of these jobs and economic opportunities without improvements to the licensing process.

We believe H.R. 3043 is a moderate proposal developed with bipartisan input and, as such, deserves strong support by both Republicans and Democrats. Please contact any of our organizations for additional information or assistance on this bill.

Sincerely,

The American Council on Renewable Energy (ACORE), American Public Power Association (APPA), Business Council for Sustainable Energy (BCSE), Edison Electric Institute (EEI), International Brotherhood of Boilermakers (Boilermakers), International Brotherhood of Electrical Workers (IBEW), International Federation of Professional and Technical Engineers (IFPTE), Large Public Power Council (LPPC), Laborers' International Union of North America (LiUNA), National Electrical Contractors Association (NECA), National Hydropower Association (NHA), National Rural Electric Cooperative Association (NRECA), North America Building Trades Council (NABTU), United Brotherhood of Carpenters and Joiners of America (Carpenters).

Mr. UPTON. Mr. Chair, can I inquire as to how much time is remaining on both sides?

The Acting CHAIR (Mr. ROGERS of Kentucky). The gentleman from Michigan has 17 minutes remaining, and the gentleman from Illinois has 16 minutes remaining.

Mr. RUSH. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. SARBANES), a very important member of the committee.

Mr. SARBANES. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chair, I rise in opposition to the Hydropower Policy Modernization Act of 2017 because it weakens States' rights to protect their own water quality.

Under the Clean Water Act, States have the right to protect their water by setting water quality conditions on hydropower licenses. This bill would constrain that authority, forcing States to issue rushed conditions using incomplete scientific data, or surrender their authority to issue conditions at all. In short, the choice that States have to protect their water and their people is to either do it poorly or not at all.

We had a fix for this. We had an amendment to H.R. 3043, but it was not made in order. It would have preserved the critical role States play in protecting local water quality by exempting their rights under the Clean Water Act from the bill.

For Marylanders in my State, this issue is bipartisan and hits close to home. FERC is currently considering the relicensing of a hydroelectric dam on the Susquehanna River. The Susquehanna provides 50 percent of all of the freshwater that reaches the Chesapeake Bay, making it a critical driver of the Bay's water quality. Any new FERC license will need to have conditions that protect the Susquehanna and the Bay from the sediment and nutrient pollution built up behind the dam. That is why even Republicans in our State, the secretary of the environment, and secretary of natural resources sent a letter urging Congress to strike the provisions in this bill that would limit Maryland's ability to set water quality conditions.

I am disappointed that my colleagues on the other side of the aisle in this body, who so often remark on the importance of protecting States' rights from usurping Federal agencies, have refused to protect States by bringing this critical amendment to the floor.

Mr. Chair, I urge all of my colleagues to oppose H.R. 3043.

□ 1415

Mr. UPTON. Mr. Chairman, I yield 3 minutes to the gentleman from Oregon (Mr. WALDEN), who is the chair of the Energy and Commerce Committee.

Mr. WALDEN. Mr. Chairman, I want to draw attention, first of all, to page 17, line 23, of the bill because we have heard from those who oppose it that somehow this could adversely undermine the Federal Water Pollution Control Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, et cetera.

Line 23 makes it very clear, ''No effect on other laws. Nothing in this section shall be construed to affect any requirement of'' these underlying and very important laws that protect our environment.

So I just want to make sure that is in the RECORD. This is the current text of the bill we are voting on today.

Mr. Chairman, I rise in support of H.R. 3043, the Hydropower Policy Modernization Act.

Hydropower plays an enormously important role in electricity generation across the country, and especially in my home State of Oregon. Hydropower generates 43 percent of electricity in my State. It is dependable base load, it is carbon-free, it is renewable, and it is very important to our region.

Nationally, hydropower is one of the largest sources of renewable electricity generation. A recent Department of Energy report said that U.S. hydropower could grow by almost 50 percent by the year 2050.

Thankfully, my good friend from Washington, CATHY MCMORRIS RODGERS, introduced this legislation because, as these entities go to relicense, sometimes it costs tens of millions of dollars just to get a renewal of a government permit to continue to do what you have been doing, and it can take 7 to 10 years to work through the process. By the way, all those costs generally—guess who pays for them? The ratepayers. People paying their electricity bill end up paying for all this incredible, out-of-control review and regulation.

As the committee worked on this legislation under the able hand of the chairman of the Subcommittee on Energy, Mr. UPTON, we solicited feedback from all stakeholders as we crafted this. We made a number of changes to address the concerns. We had hearings, and we had lots of other individual discussions and roundtables. We added new provisions to ensure that States and Tribes are consulted early in the licensing process to identify and resolve issues of concern.

We also made sure that State and local governments could recoup the cost of reviewing applications and conducting studies. We even added a strong savings clause that clarifies our intent that nothing in the bill shall be construed to effect any requirement of the Clean Water Act, the Endangered Species Act, and other environment laws.

As a result, we find ourselves here today with bipartisan support for this legislation and the support of the American Council on Renewable Energy, the American Public Power Association, the Business Council for Sustainable Energy, Edison Electric Institute, the International Brotherhood of Boilermakers and Electrical Workers, the International Federation of Professional & Technical Engineers, the Large Public Power Council, Laborers' International Union of North America, the National Electrical Contractors Association, the National Hydropower Association, the National Rural Electric Cooperative Association, North America Building Trades Council, and the United Brotherhood of Carpenters and Joiners of America—those most intricately involved in making sure we have reliable and clean base load hydropower.

Support this modernization legislation. Mr. Chairman, it is bipartisan, and I urge my colleagues to support it.

Mr. RUSH. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. TONKO).

Mr. TONKO. Mr. Chairman, I thank the ranking member of our subcommittee, the gentleman from Illinois, for his leadership and hard work on the subcommittee and for yielding me this time.

Mr. Chairman, I want to express a few concerns with the bill before us. But first, let me say that I support hydropower and believe it must be maintained as an important part of our generation mix.

Hydro is an excellent source of reliable, zero-emissions electricity generation. In order to address climate change and increase clean energy production, it is, indeed, critical that we make licensing and relicensing of these projects feasible.

This is an important issue for my home State of New York. Hydropower resources produce 19 percent of New York State's total electricity generation in 2016. The average age of New York's hydropower facilities is over 50 years, and many projects are expected to go through the relicensing process in the next 15 years.

I want to reiterate that Members on both sides of the aisle want to see these projects developed within reasonable timelines. I understand the current challenges in relicensing and the desire to bring greater certainty to the process. However, I do not think the bill before us would address those concerns in a balanced approach, which takes into account the legitimate concerns of State and Tribal governments and environmental stakeholders.

The process that produced this bill was flawed from the beginning. The committee failed to hold a hearing to understand the concerns of State and Tribal governments or Federal resource agencies. These entities would be those whose authorities may be limited by FERC under this legislation.

The bill enables FERC to set a schedule that may limit State and Tribal governments and other Federal agencies from having the time to fully consider and, yes, set conditions on license applications.

An enforceable FERC schedule, outside the control of these agencies, may create a perverse incentive for applicants to slow-walk their responses to information requests from other agencies and State governments, effectively running out the clock and preventing conditions from being required on the application.

Our water resources are precious. Different stakeholders have a variety of expectations and demands—power generation, recreation, wildlife and fish habitat, drinking water, and agriculture. Managing these resources effectively is about balancing those often-competing interests.

The Democratic alternative addresses the schedule concern by allowing stakeholders to be involved in the creation of the schedule-setting process. But I also believe FERC has some of the necessary tools already in the underutilized Integrated Licensing Process which encourages all stakeholders to engage in a robust, information sharing process up front.

Now, finally, to set the record straight, I listened intently as the gentlewoman from Washington State, the sponsor of the bill, spoke to the fact that the Standing Rock Sioux were, indeed, represented at hearings, that they had a witness at the FERC hearings. They were there to discuss pipelines and not hydro.

Mr. Chairman, so I am opposing this bill today, but I hope we can move forward with a truly bipartisan process in the future to improve the licensing process while respecting the needs of all stakeholders.

Mr. UPTON. Mr. Chairman, I yield 2 minutes to the gentleman from Colorado (Mr. LAMBORN), who is a member of the Natural Resources and Armed Services Committees, to speak in support of the bill.

Mr. LAMBORN. Mr. Chairman, I rise today in support of H.R. 3043, the Hydropower Policy Modernization Act of 2017, sponsored by the gentlewoman from the State of Washington (Mrs. MCMORRIS RODGERS).

This bill simply intends to bring hydropower permitting into the 21st century by improving efficiency, accountability, and transparency within the Federal Energy Regulatory Commission and also reducing Federal duplication.

Hydropower is a reliable and emissions-free source of electricity that accounts for much of the Nation's total renewable electricity generation. In fact, only 3 percent of existing dams in the United States produce hydroelectricity. This illustrates the vast opportunity in this country for new hydropower generation.

In the Water, Power, and Oceans Subcommittee of the Natural Resources Committee which I chair, we have spent much of this Congress crafting and advancing legislation to capitalize on these opportunities. Legislation such as my bill, the Bureau of Reclamation Pumped Storage Hydropower Development Act, is intended to promote pumped storage hydropower development at existing reclamation facilities. Mrs. MCMORRIS RODGERS' bill in front of us today goes hand in hand with those efforts.

Even our friends across the aisle agree with our efforts to promote hydropower development. At a May oversight hearing in my subcommittee on the challenges facing hydropower, committee Democrats helpfully suggested that we should find ways to retrofit all nonpowered Federal facilities with hydropower. We should all agree that improving the permitting and approval process for these facilities would be the easiest way to achieve this goal.

Mr. Chairman, I want to thank Congresswoman MCMORRIS RODGERS again for sponsoring this critical piece of legislation. She has been and continues to be a champion supporter of hydropower. Just last month, my subcommittee considered another bill authored by the Congresswoman—H.R. 3144—that looks to provide certainty and reliability to several Federal hydropower projects producing electricity in the Federal Columbia River Power System that have been mired in third-party litigation, questionable and expensive judicial edicts, and onerous Federal regulations.

Mr. RUSH. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. GARAMENDI).

Mr. GARAMENDI. Mr. Chairman, February 17, Oroville Dam, California, a 30-foot potential tsunami coming down on the cities of Oroville and further down the river in Marysville and Yuba City. 200,000 people evacuated. Thankfully, the rain did stop and the levee, or the spillway, that had failed did not become a catastrophe.

FERC is now in the process of relicensing the dam, and a complete environmental impact statement is now more than a decade over, 2007. However, there have been very significant changes like, you know, maybe the dam could collapse, or the spillway. We know that the river has been further congested with the material that came from the broken spillway.

There are serious negative environmental impacts that have resulted from the damaged spillway. The river can't carry the same capacity. It has been silted.

Bottom line, it is for these reasons that a failure by FERC to require a supplemental environmental impact statement would be a serious abdication of FERC's responsibility.

Unfortunately, a proposed amendment by Mr. LAMALFA, my good Republican colleague, and me to require such a supplemental impact statement was not included in the bill. Nevertheless, my message to FERC is clear: you must do this so that there is full protection and full understanding of the potential impact that this dam will have on communities, our water supply, as well as flooding.

Mr. UPTON. Mr. Chairman, I yield 2 minutes to the gentleman from Arizona (Mr. GOSAR).

Mr. GOSAR. Mr. Chairman, I rise today in strong support of H.R. 3043 from Representative MCMORRIS RODGERS, the Hydropower Policy Modernization Act of 2017.

For centuries, Western States have fought over scarce water supplies. We even have an expression in the West that says: Whiskey is for drinking and water is for fighting over.

Water scarcity in the West led our visionary forefathers to build Federal water storage projects throughout the West to provide water, hydropower, recreation, flood control, and environmental benefits while adhering to States' water rights.

These were nonpartisan endeavors, as evidenced by President John F. Kennedy dedicating the San Luis Dam in California. While the Central Arizona Project came after President Kennedy,

it continues to bring prosperity to Arizona's cities, Tribal communities, ranches, and farms almost 50 years after its inception.

The Glen Canyon Dam and other projects affiliated with the Colorado River Storage Project provided the backbone of a regional economy that has produced year-round and emissions-free hydropower.

H.R. 3043 streamlines the permitting process and encourages the expansion of hydropower generation by establishing a single lead coordinating agency, the Federal Energy Regulatory Commission, FERC, in order to facilitate in a timelier manner all hydropower authorizations, approvals, and requirements mandated by Federal law.

This bill will also dramatically decrease costs to relicense non-Federal dams, a huge win for the West.

Presently, FERC exercises jurisdiction over 1,600 non-Federal hydropower projects at more than 2,500 dams under the Federal Power Act.

According to FERC, the relicensing workload is increasing dramatically. Between FY 2017 and FY 2030, roughly 480 projects amounting to 45 percent of FERC-licensed projects will begin the relicensing process.

Rural co-ops, power companies, and other stakeholders in the West need a clear process without the bureaucracy. Let's get bureaucracy out of the way and pass H.R. 3043 so we have a clear process moving forward for pursuing worthwhile hydropower projects.

Mr. Chairman, I thank the gentlewoman from Washington for the sponsorship of this much-needed legislation, and I urge my colleagues to vote in support of this commonsense bill.

Mr. RUSH. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. RUIZ).

Mr. RUIZ. Mr. Chairman, I rise in strong opposition to H.R. 3043, the Hydropower Policy Modernization Act, which undercuts Federal-Tribal treaty and trust obligations. In fact, parts of this bill specifically eliminate protection for Tribes and ensure that dams and other hydropower projects do not harm Tribal fisheries, livelihoods, or violate treaty rights.

This is unacceptable. Not only does this undermine Tribal sovereignty, but it flies in the face of our moral and legal obligation to protect Tribal treaties, land, and resources under the Federal trust responsibility.

I am especially disappointed that the majority had the opportunity to fix this issue, yet walked away from the table. Even though I brought this up as an issue to fix in committee, the majority rushed this bill through committee for a House vote without adequately addressing Tribal concerns.

□ 1430

Furthermore, the majority refused to make in order my amendment, meaning they denied the fix to empower Tribes to set reasonable conditions on hydropower projects to protect their reservation and resources. In fact, the letter sent by Democratic Ranking Member PALLONE requesting a hearing to allow Tribal input and Tribal participation on this particular issue was left unanswered.

So I say this to those Republicans who do support Tribal sovereignty and self-determination: You can still fix this issue and improve the Federal hydropower licensing process, simultaneously, while still protecting Tribal treaty rights, by supporting the Rush substitute amendment.

Join the Democratic Rush amendment that includes language to empower Tribal governments to determine when a project may harm their Tribe. Without this fix, this bill undermines Tribal governments and harms resources and lands, therefore, putting energy profits above Tribal treaty rights.

I urge my colleagues to take a stand. Do not ignore your responsibility to Tribes when it matters most. Support the Democratic substitute amendment sponsored by Representative RUSH that preserves the responsibility of the Federal Government to honor treaty obligations and protect Tribal resources.

Mr. UPTON. Mr. Chair, I yield 2 minutes to the gentleman from California (Mr. DENHAM).

Mr. DENHAM. Mr. Chair, I rise in support of H.R. 3043, the Hydropower Modernization Act of 2017.

In my area of California's Central Valley, we have the Turlock and Modesto Irrigation Districts. They have been fighting for over 8 years to relicense the Don Pedro hydropower facility. This is on the Tuolumne River. This is where we get our drinking water for the families in our communities; this is where we get our water for irrigation for our farms; yet our ratepayers have been spending money, for over 8 years, just on the relicensing process.

They have had engineers and scientists who have done 35 studies. They have done the modeling for FERC to show all the different impacts that will be had here. In the process, they have spent $30 million already. They planned to spend over $50 million.

We are not going to have one drop of extra water storage. This is not going to improve the quality of the water that the people in my district are going to drink. No new water, no better quality—it is still going to see the same conditions for our fish, the same conditions for our streambeds.

After $50 million and over 8 years, all we will have done is completed over 35 studies to continue to look, continue to go through red tape, and the people in my district will still have a water shortage. We can do things much better.

Close to me, we also have the Merced Irrigation District, as well. They have been working over a decade in relicensing the Exchequer Hydroelectric project. Over $20 million has been spent. Again, the same type of scenario: for farmers and families, no new improved water quality, no new water storage, just a decade and $20 million for many, many studies that are not improving our process.

The Acting CHAIR. The time of the gentleman has expired.

Mr. UPTON. Mr. Chair, I yield the gentleman from California an additional 30 seconds.

Mr. DENHAM. Mr. Chair, this legislation is not going to solve all of our problems for California's Central Valley, but it will help us with the challenges we are facing with relicensing.

We can do things better, we can do them more efficiently, and we can actually bring water delivery to the people who need it most. It starts with FERC relicensing and changing the process to a much more transparent and efficient process. This bill deserves a ''yes'' vote, which will help us through that process.

Mr. RUSH. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. COSTA).

Mr. COSTA. Mr. Chair, I thank the gentleman from Illinois for yielding.

Mr. Chair, I rise in support of H.R. 3043, the Hydropower Policy Modernization Act.

Mr. Chair, I believe, and I think others do as well who have had experiences within their constituencies, within their congressional districts, that the hydro relicensing process is plainly broken, plain and simple.

Let me give you a couple of real-life examples of why this legislation is needed, and why it is needed now. They both provide energy in my district for the people in the San Joaquin Valley, for households, for farmers, and for people in the valley, and they are the same two examples that Congressman DENHAM spoke of a moment ago.

The Turlock and Modesto Irrigation Districts have worked through the licensing process in good faith for more than 8 years, and they have spent over $30 million to renew the license for Don Pedro Dam, a facility that has been in operation for almost 40 years. The districts estimate that, when they are finished with this process, they will have spent almost $50 million.

Meanwhile, the Merced Irrigation District, my constituency, has spent over 10 years and $20 million to relicense the Exchequer Hydroelectric project. This process is still not finished. This facility has been in operation for over 60 years.

Since these are public agencies, these costs are passed on to the ratepayers in mostly small, rural communities that Congressman DENHAM and I represent. It raises their electric costs. It makes no sense.

This is about maintaining clean, renewable energy. This is about reducing the regulatory burden and not passing these costs on to the ratepayers. Given the experience that I have just given you, my constituents believe that, frankly, this bill could go further in removing inefficiencies in the relicensing

process, but it is a good first step. It is a work in progress. It is certainly not perfect.

I support the legislation, and I urge my colleagues to do the same.

Mr. RUSH. Mr. Chair, may I inquire as to how much time is remaining on both sides.

The Acting CHAIR. The gentleman from Illinois has 5 minutes remaining. The gentleman from Michigan has 7½ minutes remaining.

Mr. UPTON. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. LAMALFA).

Mr. LAMALFA. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of this commonsense hydropower streamlining process for modernizing the way we permit in order to bolster the process for over 400 existing hydropower projects in the United States. It is very important in my area as well.

Hydropower delivers clean, reliable, and renewable power 24 hours a day, unlike other renewable power sources which fluctuate with time of day, weather, sun or wind, or lack thereof.

California has a long history of hydropower generation. In 2014, California, alone, produced 14,000 megawatts of electricity from hydropower facilities—again, clean, renewable, and reliable. You turn on the switch, hydroelectric power.

My district in northern California is home to two of the largest facilities in the country: Oroville Dam and Shasta Dam. Each of these facilities delivers cost-efficient power, provides flood control, and generates significant local economic activity for the community via stored water and recreation.

With local input, which is very important, we need to address the streamlining of this process and expanding renewable hydropower production in this country to pave the way for new jobs and affordable power to consumers everywhere.

Relicensing permits ought not be a wish list for every special interest, but, indeed, on measures of the power that can be generated.

Mr. Chairman, I appreciate the time, and I wholeheartedly support and urge this House to support H.R. 3043.

Mr. RUSH. Mr. Chairman, I reserve the balance of my time.

Mr. UPTON. Mr. Chairman, I yield 2 minutes to the gentleman from Montana (Mr. GIANFORTE).

Mr. GIANFORTE. Mr. Chair, I rise to join my colleagues in supporting the Hydropower Policy Modernization Act.

Nearly one-third of the electricity generated in Montana comes from hydropower. The Libby, Hungry Horse, and Noxon Rapids projects each have the generating capacity of more than 400 megawatts. There are dozens more smaller hydropower facilities in Montana, from Thompson Falls to those around Great Falls, to Tiber and Fort Peck and Yellowtail.

This legislation will ensure that existing projects will have timely relicensing and enhance consultation between Federal, State, local agencies, and our Indian Tribes. It will also help provide certainty for new projects.

I know, in my home State, there are proposals to electrify existing flood control and irrigation dams, like the Gibson Dam, that face ongoing licensing issues. I have introduced legislation to address that particular one.

This bill is a step in the right direction for hydropower nationwide, and I am happy to support it.

Mr. RUSH. Mr. Chair, I yield myself such time as I may consume.

Mr. Chair, I include in the RECORD letters from Confederated Tribes and Bands of the Yakama Nation, Puyallup Tribe of Indians, Snoqualmie Tribe, Skokomish Indian Tribe, and a copy of the resolution passed in October 2017 by The National Congress of American Indians opposing the proposed amendments to the Federal Power Act.

CONFEDERATED TRIBES AND
BANDS OF THE YAKAMA NATION,
Toppenish, WA, November 7, 2017.

Re Hydro legislation still bad for Indian Tribes, States and Users of Public Waterways.

Hon. PAUL RYAN, Speaker,
Hon. NANCY PELOSI, Minority Leader,
Honorable Members of the House of Representatives, Washington, DC.

DEAR SPEAKER RYAN, MINORITY LEADER PELOSI AND HONORABLE MEMBERS OF CONGRESS: Yesterday, when the Rules Committee discussed HR 3043, the Hydropower Policy Modernization Act of 2017, a number of members of the committee including Chairman Sessions, Congressman Cole, Congressman Newhouse, Congressman McGovern, Congresswoman Cheney as well as the Chairman Walden and Ranking Subcommittee Member Rush (who were testifying), all stressed the importance of ensuring that Indian tribes have their treaty rights and natural resources protected by any actions of the Congress relative to hydropower reform. We greatly appreciate the concerns of these members and the amount of time they spent discussing tribes and dam relicensing. I think many of them were aware of the degree to which the placement of dams has negatively affected a number of reservations, flooding some and damaging salmon runs at others. While there was universal agreement that the rights of tribes and states must be protected, there was not agreement on whether HR 3043 accomplishes that laudable intent. I must tell you that the bill does not do so.

First understand what the Federal Power Act (FPA) now says.

Under provisions that have been in effect for decades, state governments, pursuant to the Clean Water Act, are able to set water quality standards at hydro dams. Such conditions are mandatory. Allowing states to establish water quality standards, a key aspect of Federalism that many in Congress have always fought for, was a lynchpin of the grand bargain reached when the Clean Water Act became law. While Federalism has not really benefitted Indian tribes, we are surprised that the Congress would weaken the ability of states to protect the public in this fashion. We hope you will read what many states have said in letters to the Committee, i.e., HR 3043 weakens their ability to ensure their standards are met during the licensing process. Letters of this nature have come from entities as varied as the Western Governors Association and the Southern States Energy Board.

Also under the longstanding language of Section 4(e) of the FPA, Cabinet Secretaries with authority over ''federal reservations'' are directed to ensure that a proposed hydro project doesn't negatively affect a reservation or interfere with its congressionally designated use. These include all lands and marine reserves in the Federal estate from Indian reservations, to National Forests to Wildlife Refuges. Section 18 of the FPA deals with the establishment or modification of fishways to ensure fish can pass over these dams. The Secretaries of Commerce (for NMFS) and Interior (for USFWS) deal with fish passage and the Secretaries of Interior (for BIA, BLM, USFWS and NPS) and Agriculture (for USFS) deal with protecting federal reservations. They have the authority to propose mandatory conditions on hydro dams to ensure their operation protects these federal resources that belong to all Americans.

The legislation weakens the conditioning authority for protecting state water quality, for fishways and for federal reservations by transferring significant decision-making authority to FERC. Under the bill, FERC and the license applicant can challenge the necessity of a condition and have that challenge heard via a trial-type hearing only at FERC before an Administrative Law Judge (ALJ) at that agency. Under present law, decisions such as these are heard by ALJs in the agency making the recommendation, where the expertise resides. This provision in the bill is legislating forum shopping and directing that the decision be made before an entity whose expertise is in areas such as energy markets and safety at power plants. FERC and its ALJs have no expertise relative to Indian treaty rights or the Federal Land Policy and Management Act among many bedrock laws and FERC testified before the Committee that they do not want to be given this newfound authority. While having trial-type hearings at FERC and authorizing FERC to set all manner of schedules in the permitting process will certainly create countless billable hours for attorneys representing license applicants, it will do nothing to protect the interest of Indian tribes or the public at large, and as stated above, is directly contrary to state authority under the Clean Water Act and Secretarial authority now found in the Federal Power Act.

Yesterday we heard that this process will expedite licensing but if that is the goal then wouldn't it make sense to determine when an application for a license is complete? Tribes repeatedly asked the hydropower industry to clarify that matter in the bill but they refused. Why? Existing hydropower dam licenses were issued decades ago before any environmental statutes were on the books and many of those dams are fish killers. Under the present law, when a license expires the operator can automatically get annual extensions allowing it to operate under 30–50 year old standards. These extensions can go on for year after year with the operator not having to spend any money to mitigate the damage to fish or other resources. This is more than ironic considering that the hydropower industry is telling Congress that they need the legislation to ensure certainty and time frames in the relicensing process. Additionally, the bill is drafted in such a fashion that FERC can set schedules that are so abbreviated that Tribes, Cabinet Secretaries or States who wish to comment and perhaps undertake a fishery study when necessary may not have the time to properly prepare suggested or mandatory operating conditions. It is noteworthy that FERC told the Committee that they don't see the legislation actually streamlining the application process. Also, we checked today and could find no tribes in support of this bill.

We believe the Amendment in the Nature of a Substitute (AINS) incorporates much of what the majority proposed in HR 3043 while incorporating many changes that are reflective of the input that the Committee received from states and tribes who took the time to relay views and concerns to the Committee. A key part is the requirement for a negotiated rule-making to improve and expedite the hydro licensing process by bringing in states, local governments, stakeholders and tribes to FERC to develop a process that will enable FERC to make decisions on license applications within a maximum of three years. We urge you to vote for the AINS. Without such changes it is highly unlikely that the bill will make it through the Senate. Thank you for considering our views.

Sincerely,

JODE L. GOUDY,
Tribal Council Chairman.

PUYALLUP TRIBE OF INDIANS,
Tacoma, WA, August 9, 2017.

Re Hydropower Policy Modernization Act, H.R. 3043.

Hon. GREG WALDEN,
Chairman, Energy and Commerce Committee, Washington, DC.
Hon. FRANK PALLONE,
Ranking Member, Energy and Commerce Committee, Washington, DC.

DEAR CHAIRMAN WALDEN AND RANKING MEMBER PALLONE: I write to express the Puyallup Tribe's strong objections to the amendments to the Federal Power Act that are now being considered as part of the Hydropower Policy Modernization Act, H.R. 3043.

First, the bill would give FERC, an agency with no relevant experience or capacity, the responsibility for determining the scope of environmental review that Interior, Commerce, States and even Tribes should undertake.

Second, H.R. 3043 would upset the careful balance that now exists under federal law and let FERC set the timeline on case-by-case basis for agencies to impose mandatory 4(e) conditions and other requirements, including Section 18 (fishways) and Clean Water Act permits. The consideration of hydropower licenses is a complicated process that must consider the impact of a project on watersheds and numerous species of fish and wildlife before giving operators 50-year licenses to take power from these ecosystems. It takes time to do the necessary studies to determine what types of conditions can best protect these watersheds, including sensitive fisheries habitat, and the resources not only for Treaty-reserved Indian Reservations and resources, but also for the multiple users of these watersheds, including recreation, commercial fishing, and agriculture. If FERC's past actions are any guidance, FERC will impose unrealistic deadlines that the agencies will not meet. This bill will return the Nation back to a time when hydropower projects flooded Indian lands, extirpated entire species of salmon, and destroyed critical cultural resources.

Third, this bill would allow FERC for the first time to make a determination that a mandatory condition is inconsistent with the Federal Power Act. This would undermine the Supreme Court's decision in Escondido Mut. Water Co. v. La Jolla Band of Mission Indians, 466 U.S. 765 (1984), which held that the FPA provides no authority to FERC to impose restrictions on the 4(e) conditions submitted by the Secretary of Interior. The current process affords the hydropower industry ample opportunity to consider and respond to potential Sections 4(e), 18, and Clean Water Act conditions. Hydropower licensees can (and in fact do) actively participate in the process by which these conditions are deliberated and set. And while these conditions are not subject to modification by FERC, they are subject to judicial review, and FERC is free to express its disagreement with the conditions, so that FERC's views can also be considered by the courts.

Finally, the bill requires the Agency imposing these conditions to prepare a written statement that the Agency gave equal consideration to power generating interests in issuing its 4(e) conditions. Currently, if a hydroelectric project is located on federal lands, including Indian Reservations, the only consideration the Secretary has is to impose conditions that protect those reservations. There is no consideration of other interests. This has been the law for almost ninety years.

We urge you to continue to work with Tribes and other stakeholders to improve the hydropower licensing process for all interests and not simply for the industry.

Sincerely,

BILL STERUD,
Chairman,
Puyallup Tribal Council.

SNOQUALMIE TRIBE,
June 21, 2017.

Hon. GREG WALDEN,
Chairman, Committee on Energy and Commerce, Washington, DC.
Hon. FRANK PALLONE, Jr.,
Ranking Member, Committee on Energy and Commerce, Washington, DC.

DEAR CHAIRMAN WALDEN AND RANKING MEMBER PALLONE: On behalf of the Snoqualmie Indian Tribe, we write to express our continued concerns regarding proposed changes to the federal hydropower licensing approval process. The proposed changes would abrogate the federal government's overarching trust responsibility to Indian tribes and its ability to uphold tribal treaty rights. Our Tribe is particularly concerned that current legislative reform efforts to consolidate hydropower approval authority within the Federal Energy Regulatory Commission (FERC) unduly favor the interests of private industry at the expense of tribes, local and state governments, natural resources, and local citizens. As our trustee, we urge you to ensure that any hydropower legislation passed out of the Committee will only strengthen Tribes' ability to give input on hydropower licensing decisions at hydropower facilities.

The Snoqualmie Tribe is adamantly opposed to legislative reforms efforts that seek to undermine current mechanisms that ensure adequate consideration of the effects of a proposed hydropower project on affected Indian lands and natural resources. In particular, the proposed changes to §§4(e) and 18 of the Federal Power Act and §401 of the Clean Water Act would enable FERC to disregard mandatory conditions imposed by federal and state land management agencies. Disregarding the established expertise and mission of such agencies to evaluate and mitigate impacts to Indian lands and natural resources directly undermines the federal government's ability to fulfill its trust and treaty obligations to Indian tribes. For example, §§34 and 37 of the draft legislation would allow FERC to effectively waive conditions necessary to implement the Northwest Power Act, Endangered Species Act, or the Clean Water Act if a state, tribe, or federal agency cannot meet a FERC deadline. Additionally, the proposed schedule of 120 days to complete all ''federal authorizations'' is unworkable in practice and will inevitably lead to such waivers.

It is imperative that any legislative reforms to the hydropower permitting process adequately consider and mitigate the impacts to Indian lands, Tribal sacred sites, and natural resources. Historically, American Indian tribes have experienced disproportionate negative effects when dams, including hydroelectric projects, were approved without adequate tribal consultation or consideration of the effects on surrounding natural resources. For example, in the past, hydropower dams have flooded Indian reservations resulting in the permanent loss or damage to Tribal lands and sacred sites.

Given the Snoqualmie Tribe is a signatory to the Treaty of Point Elliot of 1855, the federal government has an enforceable fiduciary obligation to act as trustee on the Tribe's behalf. Of critical significance to our people is Snoqualmie Falls, a 268-foot waterfall that is the place of our creation history and our most sacred site. The Falls are an essential part of our cultural and religious practices where we pray, conduct sacred ceremonies, and traditionally buried our dead. Our Tribe is all too familiar with the negative impacts of inadequately planned hydroelectric dams on our culture, lands, and very way of life. For more than 100 years, Snoqualmie Falls has been hampered by the diversion of its water for a hydroelectric dam that significantly reduces the strong flow of water and the mists coming from the Falls. Without these, our religious practices are severely limited and we cannot fully engage in our cultural heritage.

The current draft hydropower reform legislation does not appropriately balance various stakeholders' interests and, instead, prioritizes private industry interests above the federal governments' responsibility as trustee to Tribes. Accordingly, we urge the Committee to ensure that legislation passed out of the Committee strengthens Tribes' ability to give input on hydropower decisions.

Thank you for your consideration on this very important religious and cultural issue to our Tribe. We look forward to working with the Committee to ensure any hydropower reform efforts are suitably tailored to uphold the federal government's trust responsibility to Indian peoples and protect tribal treaty rights.

Sincerely,

SNOQUALMIE TRIBAL COUNCIL.

SKOKOMISH INDIAN TRIBE,
Skokomish Nation, WA, June 21, 2017.

Re Proposed Amendments to the Federal Power Act.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.
Hon. FRANK PALLONE, Jr.,
Ranking Member, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR CHAIRMAN UPTON AND RANKING MEMBER PALLONE: I write to again express the Skokomish Tribe's strong objections to the amendments to the Federal Power Act that are now being considered by the House Energy and Commerce Committee.

If this bill is enacted as approved by the Committee, it would represent one of the most significant roll backs of the federal trust responsibility since termination. For more than ninety years the Federal Power Act directed Interior and other land management agencies to impose conditions on hydroelectric projects to protect federal lands including federal Indian Reservations and Treaty protected resources. However, in the first forty years, the federal land management agencies largely ignored this responsibility. As a consequence of this abdication to the Skokomish Tribe, our Reservation and our resources paid a very high price.

Our story is but one of many across Indian country. In the 1920s Tacoma City and Light received a license for the Cushman Dam on the North Fork of the Skokomish River. The entire flow of the North Fork of the Skokomish River was diverted from its channel and sent to a power house on Hood Canal (a bay of the Puget Sound). The dewatering of the North Fork completely destroyed a premier salmon run, with grievous economic and cultural consequences for the Tribe. See generally, City of Tacoma v. FERC, 460 F.3d 53, 62 (D.C. Cir. 2006); Skokomish Indian Tribe v. United States, 410 F.3d 506, 509–510 (9th Cir. 2005) (en banc revised). In terms of direct impact on the Skokomish Reservation itself, the dewatering of the North Fork resulted in an approximately 40% reduction in the flow of the Skokomish River mainstem. This change in the hydrology of the Skokomish River caused one-third of the Reservation to be flooded. Skokomish v. United States, 410 F.3d at 509–510, see also id. at 521 (dissenting opinion of Judge Graber). In short, this project almost completely destroyed the Reservation and the fishery for which the Reservation was established.

The original Cushman Dam license expired in 1974 and the Skokomish Tribe spent significant time, energy and resources to ensure that the United States would not once again abdicate its responsibility to the Tribe and sought conditions on the new license that would protect the Skokomish Reservation. At every turn Tacoma and the hydropower industry fought the Tribe. However, in 2006, the Skokomish Tribe won the right for the Department of the Interior to exercise its Federal Power Act 4(e) conditioning authority to protect the Reservation and the Tribe. City of Tacoma, Washington v. F.E.R.C., 460 F.3d 53, 59 (D.C. Cir. 2006) (''Cushman'')

As a result of this decision, the Cushman project is now being operated in a manner meant to reverse the more than 80 years of damage to the Skokomish Reservation. These changes are slow but, over time, there will be improvements to the flow of the mainstem and flooding will lessen. Reservation lands that are waterlogged and useless will be restored and productive for the Tribe and our members again.

The bill now before the Committee would essentially reverse the decision that my Tribe fought so hard for, and will let FERC set the timeline for 4(e) mandatory conditions and other conditions, including Section 18 (fishways) and Clean Water Act Permits. The bill goes on to require the agency to imposing these conditions to give equal weight to power generating interests. Again, this would significantly undermine the federal trust responsibility to my tribe and others. If a hydroelectric project is located on Tribal lands, then the only consideration the Secretary has is to impose conditions that protect that Reservation. There is no balance of other interests. This has been the law for almost ninety years. The Tribe is at a loss for why Congress would want to change this now.

Furthermore, the bill before the Committee seeks to have FERC, an agency with no experience or capacity, the responsibility for determining the scope of environmental review that Interior, Commerce, States and even Tribes should take.

A change to the Federal Power Act is not needed. First, sections 4(e), 18 and the other related provisions of the Federal Power Act, establish proper checks and balances in the licensing process. While FERC is examining a broad range of issues in connection with the license application or renewal, the Interior Secretary can bring to bear Interior's knowledge and expertise regarding the needs of Indian country, the potential impact of the project on the Indian reservation, and address measures to ensure the proper protection of that reservation. Other sections of the Act likewise establish appropriate checks and balances by recognizing and giving effect to the responsibilities and expertise that such other agencies have on natural resource management—such as that provided by Interior's Fish & Wildlife Service and the Department of Commerce on fisheries and fish passage facilities as well as the vital and longstanding authority exercised by States and Tribes in setting water quality standards under the Clean Water Act. While hydropower is clean energy, it is clean only because of the important role that these other agencies, with the necessary expertise, have in addressing terms and conditions for hydropower licenses. FERC does not have the technical capacity to make these decisions.

The current process affords the hydropower industry ample opportunity to consider and respond to potential Section 4(e), 18 and Clean Water Act conditions. Hydropower licenses can (and in fact do) actively participate in the process by which these conditions are deliberated and set. And while these conditions are not subject to modification by FERC, they are subject to judicial review, and FERC is free to express its disagreement with the conditions, so that FERC's views can also be considered by the courts.

Finally, while the current process may take time to complete necessary studies and vetting of potential conditions, any delay in renewing licenses does not harm the hydropower licensees. As a general matter, until the license renewal process is completed, hydropower licenses are able to operate under their existing licenses which, in our experience, typically do not have many of the conditions needed to protect Indian reservations or natural resources.

We urge you to oppose amendments to the Federal Power Act that would undermine the federal trust responsibility to protect Indian Reservations or that would alter the Interior Secretary's authority under section 4(e), the provisions of section 18, or the Clean Water Act.

Sincerely,

CHARLES ''GUY'' MILLER.

NATIONAL CONGRESS OF AMERICAN INDIANS

THE NATIONAL CONGRESS OF AMERICAN INDIANS RESOLUTION NO. MKE–17–005

TITLE: TO OPPOSE PROPOSED HYDROPOWER AMENDMENTS TO THE FEDERAL POWER ACT

Whereas, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

Whereas, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

Whereas, Indian Tribes are sovereigns that pre-date the United States, with prior and treaty protected rights to self-government and to our Indian and Alaska Native lands; and

Whereas, the conservation and preservation of tribal land and resources is a priority for all tribes and a critical component of the federal trust responsibility; and

Whereas, fish are a sacred resource for many tribes; and

Whereas, the production of electricity through hydropower dams includes impacts to water quality, waterways, wildlife, recreation, livelihoods, customary and traditional activities, and treaty resources within and outside Indian and Alaska Native lands; and

Whereas, the impacts of hydropower projects located on federal lands often extend far beyond the confines of the specific lands on which the projects are sited; and

Whereas, some members of Congress and representatives from the hydropower industry have proposed amendments to the Federal Power Act that would (a) weaken the current protections Indian tribes have through the Mandatory Conditions requirements under Section 4(e) and Section 18 of that Act, (b) roll back efforts to restore fish populations through the requirement of fishways, and (c) unnecessarily limit the available time and scientific information available to federal agencies in deciding what Mandatory Conditions should be included with a license; and

Whereas, these proposed amendments to the Federal Power Act would not improve the federal hydropower licensing process, which is an important source of protections for tribal lands and resources, but rather weaken these critical protections. Now therefore be it

Resolved, that the National Congress of American Indians (NCAI), its leadership, and its executive staff shall call on the U.S. Congress and the Administration to oppose all proposed amendments to the hydropower provisions in the Federal Power Act that would remove or lessen the protections currently afforded tribal governments, tribal lands, inherent reserved rights, treaty rights and other tribal resources under the Federal Power Act; and be it further

Resolved, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2017 Annual Session of the National Congress of American Indians, held at the Wisconsin Center in Milwaukee, WI, Oct 15, 2017–Oct 20, 2017, with a quorum present.

JEFFERSON KEEL,
President.

Attest: Juana Majel Dixon, Recording Secretary.

Mr. RUSH. Mr. Chair, the substitute amendment that we will consider shortly provides Indian Tribes with authority to speak for themselves with respect to the hydropower licensing process.

Currently, Mr. Chair, the agencies of the Departments of the Interior and Commerce proposed conditions to protect Tribal reservations. If the substitute is enacted, Tribes that have sufficient capacity can assume responsibility for protecting their own reservations.

□ 1445

The Tribal authority provision is absolutely very important and long overdue. As sovereign entities, Tribes have a status different from that of States and Federal agencies. They should be negotiating on their own behalf to protect their own interests.

Mr. Chair, hydropower projects, a number of which were designed and built over the objections of Tribes, resulted in devastating losses of Tribal lands and fisheries.

We can and must do better. Hydropower projects can be designed, upgraded, and operated in ways that lower the environmental costs and preserve other important uses of the river.

Current law and current regulations already provide for consultation with Tribes. In fact, under the integrated license process, applicants are required to consult with Tribes 5 years before the current license expires if they plan to seek a renewed license.

The integrated license process was designed specifically for the more complex, controversial hydropower projects, either new projects or relicensing of existing projects.

Mr. Chair, many applicants, however, request and are allowed to pursue their license under the traditional license process that includes less opportunity for consultation. FERC should be denying some of these requests, but each and every one of them are granted by FERC.

When this happens, controversial projects run into predictable problems that bog down the license process. This is an administrative change that FERC could make that would require no new legislation and would improve the license process.

Mr. Chair, this bill does nothing—absolutely nothing—to speed up this problem or fix the process that we have been discussing.

Mr. Chair, I yield back the balance of my time.

Mr. UPTON. Mr. Chair, I yield myself such time as I may consume. I don't intend to use all the time that is remaining. I just want to make a couple of points to my colleagues as we close debate on the general debate on this bill.

This isn't a new bill. A lot of us in this body on both sides support an all-of-the-above strategy. It includes safe nuclear. It includes clean coal. It supports energy efficiencies, renewables, wind, solar, and hydro.

This bill, H.R. 3043, is not a new bill. In fact, the provisions, almost to a tee, in both the House and the Senate version last year in a bill that ultimately didn't get conferenced to President Obama, we didn't really have any disagreements on the hydro section. We came to an agreement and the House passed the bill as it relates to the hydro bill. And the Senate bill passed, as I recall it, 92–8, pretty overwhelming, pretty bipartisan. In essence, the same provisions that we have here.

I got to say that, throughout the process, we listened to the concern raised by some of the stakeholders, including States and Tribes. We made a number of significant changes to the version of the bill as compared to the version again last year that added more strength, more hurdles to go through.

The biggest change, frankly, that we made was taking the hammer away from FERC to compel agencies to stick to a deadline. Consequently, no permits are going to be granted by default because of a missed deadline. But we also inserted new State and Tribal consultation requirements with a very strong savings clause that clarifies that nothing shall affect the Clean Water Act and other environmental laws. That wasn't in the bill last year. That is new this year.

So I think that we have accommodated the concerns, particularly when many of the Members that are here in this Congress that were there last Congress actually voted for the provisions we had, certainly in committee as well as on the Senate floor.

Again, I just want to read into the RECORD page 17, line 23: ''No Effect on Other Laws. Nothing in this section shall be construed to affect any requirement of the Federal Water Pollution Control Act, the Fish and Wildlife Coordination Act, the Endangered Species Act of 1973, section 14 of the Act of March 3, 1899 (commonly known as the Rivers and Harbors Appropriations Act of 1899), and those provisions of subtitle III of title 54, United States Code, commonly known as the National Historic Preservation Act, with respect to an application for a license under this part.''

This bill is stronger than the one that most of us supported last year, particularly as it pertains to hydroelectric licensing by FERC.

So I commend the action of Mrs. MCMORRIS RODGERS, who, again, carried the water on this in this Congress. I would like to think that we will have a positive vote with Republicans and Democrats supporting the bill. We are prepared to now discuss and debate the amendments.

Mr. Chair, I yield back the balance of my time.

Mr. COLE. Mr. Chair, I rise today in opposition to H.R. 3043, the Hydropower Policy Modernization Act of 2017. However, I would like to point out the positive outcomes this bill would provide to the Hydropower industry. This bill would improve the administrative efficiency, accountability and transparency in the process of expanding hydropower generation. It would bring certainty and timeliness to the licensing process, that right now takes decades to move through. This bill would require other federal agencies to submit earlier any foreseeable issues that would prolong the licensing process, instead of waiting until the last hour as they are able to today.

With that said, H.R. 3043 falls short in its treatment of tribal communities. I believe the proponents of this bill have worked in the best interest of Indian Country, but have unfortunately fallen short. First, this bill would overturn the D.C. Circuit Court of Appeals decision in Tacoma v. Federal Energy Regulatory Commission (FERC) that held that the Department of the Interior has the mandatory authority to develop appropriate conditions to protect federal Indian reservations under the Federal Power Act. Also, that FERC has no authority to reject these conditions because the Interior Department did not meet FERC's schedule. H.R. 3043, would overturn this decision by allowing FERC to put a clock on other Federal agencies and force them to accommodate their schedule. For example, if the Interior Department misses the deadline then Tribal interests cannot be considered again until the next re-licensing opportunity at least 40 years later.

H.R. 3043 does nothing to strengthen the tribal voice in the process and truncates our trustee agencies' responsibility. This bill would allow FERC to make the determination as to the scope of environmental review for 4(e) conditions, which the Interior Department is already required to give deference to. Hydropower projects affect entire watersheds, which in turn impact Indian reservations in ways that FERC and the hydropower industry have fought to deny. However, in Tacoma v. FERC, the Court was again clear that if a project is on Indian lands, Interior alone gets to determine what conditions, and by necessity the environmental review, that are necessary to protect the Indian Reservation.

H.R. 3043 would require Interior to balance energy generating interests against the Agency's trust responsibility to protect Indian Reservations. Currently, under the Federal Power Act, Interior's only interest is developing conditions to protect federal Indian Reservations, which, frankly, should only be their interests in line with the Bureau of Indian Affairs, and not the Department of Energy.

Finally, H.R. 3043 would overturn the Supreme Court's decision in *Escondido* v. *FERC*, 466 U.S. 765 (1984) and give FERC the authority to make a determination that a 4(e) condition and fishway condition is inconsistent with the Federal Power Act. This is unprecedented change in the Federal Power Act, which will undermine the federal trustee agency's ability to protect Indian lands and resources.

There is nothing in the bill that improves the FERC relicensing in regards to tribes and, frankly, would severely undermine tribal governments and Interior Department's ability to protect tribal and trust resources.

Mr. RUSH. Mr. Chair, I include in the RECORD letters from: Vermont Agency of Natural Resources, California State Water Resources Control Board, Western Governors' Association, State of Washington Department of Ecology, Environmental Council of the States, and Association of State Wetland Managers.

STATE OF VERMONT,
AGENCY OF NATURAL RESOURCES,
Montpelier, VT, September 12, 2017.

Re Comments in Opposition to Hydropower Policy Modernization Act of 2017, H.R. 3043.

Hon. PAUL RYAN,
Speaker, House of Representatives,
Washington, DC.
Hon. NANCY PELOSI,
Minority Leader, House of Representatives,
Washington, DC.

DEAR SPEAKER RYAN AND MINORITY LEADER PELOSI: The Vermont Agency of Natural Resources (VTANR) would like to express strong concerns over the proposed Hydropower Policy Modernization Act of 2017, H.R. 3043. While VTANR supports efforts to improve and streamline current hydroelectric licensing processes, the Agency strongly opposes legislative efforts to diminish States' ability to protect water quality. Several provisions of H.R. 3043 would essential curtail the State authority under Section 401 of the

federal Clean Water Act, effectively constraining State agencies' ability to use their independent authority to set license conditions, making it more difficult to protect natural resources.

VTANR strenuously opposes provisions of H.R. 3043 that eliminate or reduce States' delegated authority under Section 401 of the federal Clean Water Act to develop mandatory licensing conditions protective of natural resources. State agencies serve an essential role in the Federal Energy Regulatory Commission (FERC) licensing process for hydroelectric facilities. H.R. 3043 would designate FERC as the lead agency over federal authorizations related to applications of hydroelectric projects for a license, license amendment, or exemptions. As the lead agency, FERC would establish and control the timeline for licensing review and process for hydroelectric projects. H.R. 3043 appears to give FERC the authority to create a schedule reducing the time a State would have to get necessary scientific studies completed and reviewed to determine specific conditions needed to protect water quality, as required under Section 401 of the federal Clean Water Act. This would effectively permit FERC to license a facility before a thorough review of the environmental impacts could be completed. Vermont uses its Section 401 authority to issue water quality certifications with conditions to ensure projects are built and operated in a manner consistent with State environmental laws and protective of the environment and public health.

In addition, a provision of H.R. 3043 provides applicants with an opportunity to a trial-type hearing before a FERC Administrative Law Judge whenever there is a dispute of material fact. Under the provisions of H.R. 3043, the decision of the FERC Administrative Law Judge would be final and not subject to further administrative review. Currently, conditions included in a Section 401 water quality certification become mandatory license conditions and cannot be altered or modified by FERC. Further matters of material facts related to Section 401 water quality certifications for hydroelectric facilities are heard at the State level by courts or boards that are familiar with a State's water quality standards and other environmental laws. The allowance for the trial-type hearing before FERC could undermine the States' authority granted under Section 401, making it more challenging to protect water quality and natural resources.

Through decades of decisions, federal courts have affirmed the authority of States to impose conditions in federal licenses issued to hydroelectric projects under Section 401 of the Clean Water Act. These decisions recognize that States have the primary responsibility to ensure State water quality standards and other environmental laws are met. H.R. 3043 would undermine this authority by including a provision that would allow FERC to seek resolution between it and States at the federal level, elevating the dispute to the secretary overseeing the federal statute. In the case of the federal Clean Water Act, H.R. 3043 appears to allow FERC to negotiate with the Administrator of the Environmental Protection Agency or Secretary of Army, who are responsible for Clean Water Act on the federal level, to settle a dispute with between it and a state, effectively cutting States out of the process.

Vermont's interest in protecting natural resources is as important and relevant today as ever, particularly because a large number of hydroelectric facilities in Vermont are slated to begin the federal relicensing process over the next five years. FERC issues licenses to hydroelectric projects for a term of 30 to 50 years. As such, many of the projects scheduled for relicensing will likely need significant changes in operations to meet modern water quality standards and to restore State water resources from impacts of project operations. As drafted, H.R. 3043 would reduce VTANR delegated authority under Section 401 of the federal Clean Water Act, creating ways for project operators to circumvent state regulations during the licensing process to allow them to operate in a manner that would continue to degrade the environment and resources of the State.

VTANR recognizes the importance of hydroelectric generation in meeting renewable energy goals. We urge you to consider how the federal process can be improved without undermining the very checks and balances that have helped hydroelectric generation be viewed as a sustainable and renewable energy source.

We appreciate your consideration of these comments on H.R. 3043 and look forward to solutions that improve our energy security and infrastructure while protecting the environment.

Sincerely,

JULIA S. MOORE, P.E.,
Secretary.

CALIFORNIA STATE
WATER RESOURCES CONTROL BOARD,
Sacramento, CA, May 17, 2017.

Hon. GREG WALDEN,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.
Hon. FRANK PALLONE,
Ranking Member, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR CHAIRMAN WALDEN AND RANKING MEMBER PALLONE:

COMMENTS IN OPPOSITION TO PROVISIONS OF HOUSE OF REPRESENTATIVES DISCUSSION DRAFTS: (1) HYDROPOWER POLICY MODERNIZATION ACT OF 2017; (2) PROMOTING CLOSED-LOOP PUMPED STORAGE HYDROPOWER ACT; AND (3) PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING NON-POWERED DAMS ACT

The California State Water Resources Control Board (State Water Board) would like to express its concerns with the following House of Representatives Legislative Discussion Drafts: (1) Hydropower Policy Modernization Act of 2017; (2) Promoting Closed-Loop Pumped Storage Hydropower Act; and (3) Promoting Hydropower Development at Existing Non-Powered Dams Act (collectively Hydropower Discussion Drafts). While the State Water Board supports the goals of energy infrastructure modernization, it opposes several provisions as drafted because the Hydropower Discussion Drafts would reduce or eliminate essential protections for California's natural resources.

The Hydropower Discussion Drafts would seriously impact the mandatory conditioning authority of the State Water Board under Section 401 of the Clean Water Act, as well as similar authorities of federal agencies. State and federal agencies serve an essential role in the Federal Energy Regulatory Commission's (Commission) hydropower licensing process. The Hydropower Discussion Drafts designate the Commission as the sole lead agency over federal authorizations related to an application for a license, license amendment, or exemption for a hydropower project. As the sole lead agency, the Commission would establish and control the timeline for the hydropower licensing process for all aspects of federal authorization, including Section 401 of the Clean Water Act. As such, the Commission could limit the State Water Board and federal agencies' time to complete their respective actions which could adversely impact the agencies' ability to comply with necessary state and federal laws and may negatively impact public and environmental health.

As noted in this letter, the State Water Board is particularly concerned about provisions of the Hydropower Discussion Drafts that would undermine states' authorities under Section 401 of the Clean Water Act. As former Chief Justice Rehnquist observed, there has been a ''consistent thread of purposeful and continued deference to state water law by Congress.'' (California v. U.S. (1978) 438 U.S. 645, 653.) This ''cooperative federalism'' is epitomized by Section 401 of the Clean Water Act, which authorizes states to set conditions to protect the waters of their states, and provides that review of conditions of certification is in state court, not by federal agencies. In so doing, Section 401 preserves both state authority and the integrity of state procedures and state institutions in overseeing how state agencies exercise that authority. Consistent with Congress' usual respect for state rights in this area, this structure must be preserved. The Hydropower Discussion Drafts inappropriately place limitations on state rights in this area by placing Section 401 of the Clean Water Act in the definition of Federal Authorization and under the Commission's jurisdiction.

The State Water Board recognizes the importance of hydropower as a clean energy source that helps provide grid reliability and supports the goal of promoting efficiencies in the Commission's licensing of hydropower projects. To promote such efficiencies, in 2013, the State Water Board entered into a memorandum of understanding with the Commission to coordinate pre-application procedures and schedules between the two agencies. Since implementation, the memorandum of understanding has improved coordination between the State Water Board and the Commission, and is beginning to streamline portions of the licensing process. The State Water Board acknowledges that it has a pending backlog of water quality certification applications, due in part to California's recent drought, and we are committed to acting upon these applications as expeditiously as possible. The State Water Board opposes provisions of the Hydropower Discussion Drafts because they may result in harm to California's water quality and associated beneficial uses, public lands, and fish and wildlife by removing key state and federal authorities designed to protect the environment and the public enjoyment of the environment. Specific comments and concerns are provided in Attachment A. Key provisions of the Hydropower Discussion Drafts are provided in Attachment B for ease of reference in reviewing the State Water Board's comments.

I appreciate your consideration of these comments and look forward to solutions that improve our energy security and infrastructure while protecting the environment.

Sincerely,

FELICIA MARCUS,
Chair.

WESTERN GOVERNORS' ASSOCIATION,
May 1, 2017.

Hon. GREG WALDEN,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.
Hon. FRANK J. PALLONE,
Ranking Member, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR CHAIRMAN WALDEN AND RANKING MEMBER PALLONE: Western Governors recognize the importance of renewable energy sources, including hydropower, as critical components of an all-of-the-above national energy portfolio. The West accounts for nearly 70 percent of the nation's hydroelectric power generation, and the Pacific

Northwest is the nation's largest hydropower-producing region Western Governors support improving the efficiency of existing hydropower systems and increasing the amount of electricity generated from new, retrofitted, or relicensed hydroelectric facilities.

States are vested with primary authority to manage water within their borders, and they have the authority to develop, use, control and distribute water resources within their boundaries. As expressed in section B(1)(a) of WGA Policy Resolution 2015–08, Water Resource Management in the West.

''While the Western Governors acknowledge the important role of federal laws such as the Clean Water Act, the Endangered Species Act and the Safe Drinking Water Act, nothing in any act of Congress or Executive Branch regulatory action should be construed as affecting or intending to affect states' primacy over the allocation and administration of their water resources.''

Western Governors are concerned about provisions in Section 34, ''Hydropower Licensing and Process Improvement'' of the proposed Hydropower Policy Modernization Act of 2017. Portions of the language included in the published discussion draft of this proposal are identical to language of Subtitle B, ''Hydropower Regulatory Modernization'' of the proposed North American Energy Security and Infrastructure Act of 2015 (H.R. 8).

On July 18, 2016, Governor Steve Bullock and Governor Dennis Daugaard provided correspondence (attached) to the Committee, expressing the Western Governors' concerns over the language included in Subtitle B of H.R. 8, which would have designated the Federal Energy Regulatory Commission (FERC) as lead agency fol all hydropower authorizations, approvals, and requirements mandated by federal law, including hydropower facility licenses and amendments, as well as all permits, special use authorizations, certifications, and opinions. The Governors requested that this language be removed or amended so that existing state hydropower licensing authorities are not replaced, or in any way impeded, by FERC jurisdiction.

Western Governors request that the language in Section 34 of the proposed Hydropower Policy Modernization Act of 2017 be removed or amended so that states' existing hydropower licensing authorities are in no way usurped by FERC jurisdiction. Thank you for your attention to this important matter.

Sincerely,

JAMES D. OGSBURY,
Executive Director.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,
Olympia, WA, November 3, 2017.

Re Hydropower Regulatory Modernization Act of 2017.

Hon. FRANK PALLONE, Jr.,
House of Representatives, Washington, DC.
Hon. GREG WALDEN,
House of Representatives, Washington, DC.

DEAR CHAIRMAN WALDEN AND RANKING MEMBER PALLONE: I am writing to express my concerns with the Hydropower Regulatory Modernization Act of 2017, H.R. 3043, which would amend the Federal Power Act to modify certain requirements. The Washington Department of Ecology (Ecology) supports the ostensible intent of this bill to gain efficiency in the licensing of hydropower projects. In addition, we support the goal of improving the certainty and timeliness of the hydropower licensing process. However, provisions in H.R. 3043 that modify the authorities of the Federal Energy Regulatory Commission (FERC) would impede or invalidate states' independent authority provided by Section 401 of the Clean Water Act (CWA §401) to establish license conditions that protect water quality.

Our residents and tribes harvest salmon from the Puget Sound up through the Columbia River, and our farmers grow hops in the Yakima River basin. They also depend on water as a source of energy to power their homes and communities, and our industries rely on abundant and consistent energy to build aircraft in Everett, power data server farms in Quincy, manufacture car bodies for electric vehicles in Moses Lake, and process apples along the Wenatchee River basin. Balancing the need for clean energy with the need for safe water supplies begins with the proper management of water as a resource, and it is one of the major focal points of this legislation.

Decades of federal court decisions interpreting CWA §401 have established the states' authority to require conditions in FERC licenses that are necessary to protect water quality. These decisions recognize and affirm the basic principle of federalism embodied in the CWA that states have a primary role and responsibility to ensure state water quality standards are met.

Ecology implements the state's Water Pollution Control Act (RCW 90.48). As the state water pollution control agency, we are responsible for implementing federal water pollution control laws and regulations, including state water quality certifications required by CWA §401 for any federal permit or license that result in a discharge to state waters. Ecology has developed durable partnerships with the hydropower industry in Washington State—the largest of any state in the nation—and has a successful record of accomplishment in expediting water quality certifications that are incorporated as FERC license conditions.

In an effort to improve H.R. 3043, my team worked for several weeks with two members of the National Hydropower Association along with staff at the Chelan County Public Utility District in Washington State. Our objective in these discussions was to maintain the intent of this legislation while also protecting states' authority provided in the CWA §401. Although the group did not reach full consensus, significant progress was made to put forth alternative language that would remove ambiguity regarding FERC and state authority. My team identified a number of changes in language that are necessary to protect independent state authority to condition and certify FERC licenses. If provided more time, and engagement directly with your committee, I am confident that all parties can reach a mutually-satisfactory policy.

Ecology appreciates Congress' effort to streamline the FERC licensing process, however, the addition of SEC. 34(b)(2) OTHER AGENCIES AND INDIAN TRIBES, would require states' water quality certification process to follow a schedule under the requirements of the FERC, rather than the schedule in CWA §401. The timelines and independent state authorities granted by CWA §401 must remain intact, as both are essential for states to issue water quality certifications. States must also retain the ability to practice a ''withdraw and reapply'' process that has proven necessary for some complex hydropower licenses. If FERC is provided authority to oversee and set a timeline different than that provided under CWA §401, it undermines states' ability to ensure effectiveness and certainty for protection of water quality.

Meanwhile, SEC. 34. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS (b) designates FERC as the lead agency for federal authorizations related to a license application, license amendment, or exemption for a hydropower license. H.R. 3043 SEC. 34. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS (d) also requires states to adhere to deadlines established by FERC, effectively reducing the amount of time a state would have to complete scientific studies necessary to determine whether water quality standards and requirements would be met in accordance with CWA §401. This will likely create pressure on states to utilize existing information (SEC 3 (b)) rather than new studies to make these determinations.

In Washington State, work thus far to provide CWA §401 certifications for licensing of hydropower facilities have been timely, responsive, efficient, and protective of the state's water quality. While additional work remains, durable partnerships and a strong track record form a solid foundation to build upon.

In summary, Ecology opposes this bill in its current form because:

FERC will have undue influence on the ability of states and tribes to obtain environmental data and information via studies that are necessary to write CWA §401 certifications to protect waters in their jurisdiction.

It would lock state and federal natural resource agencies into a no-win situation. Agencies will be forced to make regulatory decisions based on incomplete applications that lack the necessary technical information, which would put agencies at risk of missing new FERC deadlines resulting in litigation.

We believe this bill provides enough ambiguity for individuals to attempt to preempt state CWA §401 authority. The bill as written could result in legal challenges and protracted litigation on how the extension of FERC's authority conflicts with states' rights to protect water quality and quantity.

Finally, Ecology views many elements of this modernization bill as unnecessary. In July 2005, FERC restructured its process and implementing the Integrated Licensing Process (ILP) that effectively streamlined FERC's licensing process. Over the course of 12 years, Washington State has provided water quality certifications for 16 FERC issued licenses as well as 10 license amendments. The ILP has proven to be a predictable, efficient, and timely licensing process that continues to ensure adequate resource protections. This bill would eliminate the flexibility available in the current system and return to a traditional approach that is less responsive to environmental concerns and more susceptible to litigation.

We urge that the provisions of H.R. 3043 that would have the effect of curtailing state authority under CWA §401 be significantly improved or stricken from the bill.

Sincerely,

MAIA D. BELLON,
Director.

Mr. WALDEN. Mr. Chair, I rise today in support of H.R. 3043, the Hydropower Policy Modernization Act, sponsored by fellow Energy and Commerce committee member and our Conference Chair, CATHY MCMORRIS RODGERS.

Hydropower plays an integral role in generating electricity across the nation, especially back in my home state of Oregon. Hydropower generates nearly 43 percent of electricity in Oregon and this dependable baseload power has helped drive the development of everything from value-added agriculture processing to data centers, creating jobs along the Columbia River and throughout Oregon.

Nationally, hydropower is the largest source of renewable electricity generation and a recent Department of Energy report found that

U.S. hydropower could grow by almost 50 percent by the year 2050. However, as my colleagues from the Pacific Northwest and across the country know, we are not taking full advantage of this valuable resource. Unfortunately, the duration, complexity, and uncertainty of the licensing process has raised significant challenges, preventing investments that would create jobs and benefit consumers.

Thankfully, my good friend from Washington introduced this legislation to alleviate these problems and streamline the federal hydropower licensing process. The bill before us today didn't just emerge from thin air. It is the culmination of five committee hearings and markups, along with several bipartisan staff meetings with the hydropower industry and tribes that have a stake in the licensing proceedings.

We solicited feedback from all stakeholders as we crafted this legislation and made a number of changes to address the concerns raised. We added new provisions to ensure that states and tribes are consulted early in the licensing process to identify and resolve issues of concern. We also made sure that state and local governments could recoup the costs of reviewing applications and conducting studies. We even added a strong savings clause that clarifies our intent that nothing in this bill shall be construed to affect any requirement of the Clean Water Act, Endangered Species Act, and other environmental laws.

In recognition of the regular order committee process, H.R. 3043 sailed out of committee unanimously by voice vote. The supporters of this bill, especially labor and industry organizations, recognize the vital role it will play in supporting job growth, local economic development, and providing much-needed reforms to the licensing process.

H.R. 3043 seeks to modernize the permitting process by improving administrative efficiency, accountability, and transparency; requiring timely decision making; and by designating Federal Energy Regulatory Commission as the lead agency is approving permits. You may be asking yourself, 'why is this process in need of reform?' The answer is simple. As my colleague from Washington likes to point out, it can take up to 10 years or longer to license a new hydropower project of relicense an existing facility. Further underscoring the need for this legislation is the fact that by 2030, over 400 existing projects with over 18,700 megawatts of capacity will begin the relicensing process.

Mr. Chair, this emissions-free energy resource should not be bogged down in bureaucratic red tape any longer. It's past time we modernize this grossly outdated licensing process, so we can get projects to market faster and streamline those projects in need of relicensing. At the end of the day, this important legislation promotes hydropower development, creates jobs, and provides consumers across the country with continued access to clean, affordable, and reliable baseload power generation.

I include in the RECORD the Supporters of H.R. 3043:

The American Council on Renewable Energy (ACORE); (American Public Power Association (APPA); Business Council for Sustainable Energy (BCSE); Edison Electric Institute (EEI), International Brotherhood of Boilermakers (Boilermakers); International Brotherhood of Electrical Workers (IBEW); International Federation of Professional and Technical Engineers (IFPTE); Large Public Power Council (LPPC); Laborers' International Union of North America (LiUNA); National Electrical Contractors Association (NECA); National Hydropower Association (NHA); National Rural Electric Cooperative Association (NRECA); North America Building Trades Council (NABTU); United Brotherhood of Carpenters and Joiners of America (Carpenters).

Mr. RUSH. Mr. Chair, I include in the RECORD letters in opposition to H.R. 3043 from environmental, recreation, fisheries, and conservation groups from across the country along with the list of groups that have signed these letters.

ENVIRONMENTAL, FISHERIES, RECREATION, AND CONSERVATION ORGANIZATIONS IN OPPOSITION TO H.R. 3043

Alabama Rivers Alliance; Alaska Survival; All Outdoors; Alliance for the Great Lakes; Alpine Lakes Protection Society; Altamaha Riverkeeper; American Packrafting Association; American Rivers; American Whitewater; Anacostia Watershed Society; Anglers of the Au Sable; Animal Welfare Institute; Apalachicola Riverkeeper; Appalachian Mountain Club; Association of Northwest Steelheaders; Atlantic Salmon Federation; Black Warrior Riverkeeper; California Hydropower Reform Coalition; California Outdoors; California River Watch; California Sportfishing Protection Alliance; California Trout; Cascadia Wildlands; Catawba Riverkeeper; Center for Biological Diversity.

Center for Environmental Law and Policy; Central Sierra Environmental Resource Center; Clean Water Action; Coastal Conservation League; Colorado River Water keeper Network; Columbiana; Congaree Riverkeeper; Connecticut River Conservancy; Conservation Law Foundation; Conservation Northwest; Conservatives for Responsible Stewardship; Coosa Riverkeeper; Crab Apple Whitewater Defenders of Wildlife; Deschutes River Alliance; Downeast Salmon Federation; Earth Design; Earthjustice; Earthworks; Endangered Habitats League; Endangered Species Coalition; Environmental Protection Information Center (EPIC); Foothill Conservancy; Foothills Paddling Club; Foothills Water Network; Friends of Butte Creek.

Friends of Cooper Landing; Friends of Grays Harbor; Friends of Kenai National Wildlife Refuge; Friends of the Kinni; Friends of Merrymeeting Bay; Friends of the Crooked River; Friends of the Eel River; Friends of the River; Friends of the White Salmon River; Golden West Women Flyfishers; Grand Canyon Trust; Grand Riverkeeper Labrador; Great Lakes Council Fly Fishers; Green Latinos; Hells Canyon Preservation Council; High Country Conservation Advocates; Holy Spirit Missionary Sisters; Huron River Watershed Council; Hydropower Reform Coalition; Idaho Rivers United; Illinois Council of Trout Unlimited; Institute for Fisheries Resources; James River Association; Kalmiopsis Audubon Society; Kenai River Watershed Foundation.

Klamath Forest Alliance; Klamath Riverkeeper; Klamath-Siskiyou Wildlands Center; Kootenai Environmental Alliance; League of Conservation Voters; Lower Columbia Canoe Club; Lower Susquehanna Riverkeeper Association; Maine Rivers; Michigan Environmental Council; Michigan Hydro Relicensing Coalition; Middle Susquehanna Riverkeeper; Milwaukee Riverkeeper; Mono Lake Committee; Mousam and Kennebunk Rivers Alliance; National Heritage Institute; National Park Conservation Association; National Wildlife Federation; Native Fish Society; Natural Heritage Institute; Natural Resources Defense Council; Natural Resources Council of Maine; Naturaland Trust; Nature Abounds; Naugatuck River Revivial Group.

New England FLOW; New Hampshire Rivers Council; North Cascades Conservation Council; Northwest Environmental Advocates; Northwest Guides and Anglers Association; Northwest Resources Information Center; Olympic Forest Coalition; Oregon Kayak and Canoe Club; Outdoor Alliance; Pacific Coast Federation of Fishermen's Associations; Pacific Rivers; Penobscot Paddle and Chowder Society; Planning and Conservation League; Potomac Riverkeeper; Prairie Rivers Network; Prince William Soundkeeper; Quartz Creek Homeowners' Association; Religious Coalition for the Great Lakes; River Alliance of Wisconsin; River Guardian Foundation; River Network; Riverkeeper Network.

Rogue Riverkeeper; San Juan Citizens Alliance; Save Our Saluda; Save Our Wild Salmon; Save the Colorado; Selkirk Conservation Alliance; Smith River Alliance; Snake River Waterkeeper; South Carolina Native Plant Society; Southern Environmental Law Center; South Yuba River Citizens League; Spartanburg Area Conservancy; Spearfish Canyon Society; Spokane Riverkeeper; St. Mary's River Watershed Association; Tennessee Clean Water Network; The Lands Council; The Mountaineers.

The Roanoke River Basin Association; The Sierra Club; Tributary Whitewater Tours, LLC; Trout Unlimited; Tuolumne River Trust; Upstate Forever; Washington Environmental Law Center (see Western Environmental Law Center); Washington Wild; Waterkeeper Alliance; Waterkeepers Chesapeake; WaterWatch of Oregon; WESPAC Foundation; West Michigan Hacklers; Western Environmental Law Center; Wild Earth Guardians; Wild Washington Rivers; Yadkin Riverkeeper; Zoar Valley Paddling Club.

NOVEMBER 7, 2017.

DEAR REPRESENTATIVE: On behalf of our millions of members and supporters nationwide, we are writing to urge you to oppose H.R. 3043, the Hydropower Policy Modernization Act. This bill is a devastating assault on our nation's rivers and the people and wildlife that depend upon them. Its passage would end 95 years of balance in hydropower licensing, tipping the scales against taxpayers and in favor of huge utilities.

Hydropower licenses are issued for up to 50 years. Many hydropower facilities that are coming up for relicensing now were first constructed before virtually all 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 for the damage to the environment, while still providing reliable electricity, only arises once in a generation or two.

The balance the Federal Power Act currently 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, H.R. 3043 upends that balance. Simply put, the bill is a massive giveaway to special interests at the expense of healthy rivers and the fish, wildlife, and people that depend upon them. If H.R. 3043 passes, power company profits will go to the head of the line, ahead of every other user.

We appreciate that the House Committee on Energy and Commerce heard testimony from recreational and conservation interests who raised serious concerns about its many provisions. Unfortunately, the Committee

chose to make no changes to reflect the constructive suggestions that the Hydropower Reform Coalition put forward that would improve the licensing process while maintaining environmental protections. The Committee also failed to solicit testimony from states, tribes, and federal natural resource agencies whose authorities will be usurped by the Federal Energy Regulatory Commission (FERC) if H.R. 3043 is enacted. You are now being asked to vote on a bill that no state, tribe, or conservation organization publicly supports. The bill under consideration today will only benefit power companies at the expense of every other user of a waterway.

H.R. 3043 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. 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.

Other provisions of H.R. 3043, such as the changes to the Trial Type Hearing process for alternative conditions, the requirement that federal natural resource agencies conduct costly, wasteful and time consuming review of matters outside of their scope of expertise and jurisdiction, and the requirement that scientific decisions be made only by political appointees in Washington, DC are all examples of how H.R. 3043 tilts the balance toward the interests of power companies.

In order to protect clean water, irrigation, meeting tribal treaty and trust obligations, wildlife, recreational fishing, commercial fishing, whitewater boating, water quality, municipal water supply, fire safety, flood control, or any other purpose other than generating power, we urge you to vote NO on H.R. 3043.

Sincerely,

Alabama Rivers Alliance; American Packrafting Association; American Rivers; American Whitewater; Apalachicola Riverkeeper; Appalachian Mountain Club; Atlantic Salmon Federation; California Outdoors; California Sportfishing Protection Alliance; Cascadia Wildlands; Center for Biological Diversity; Center for Environmental Law and Policy; Columbia Bioregional Education Project; Connecticut River Conservancy; Conservatives for Responsible Stewardship; Defenders of Wildlife; Deschutes River Alliance; Downeast Salmon Federation; Earthjustice.

Earthworks; Endangered Habitats League; Endangered Species Coalition; Environmental Protection Information Center (EPIC); Foothill Conservancy; Friends of Butte Creek; Friends of the Kinni; Friends of the River; Golden West Women Flyfishers; Grand Riverkeeper Labrador; Green Latinos; High Country Conservation Advocates; Idaho Rivers United; Illinois Council of Trout Unlimited; Klamath Forest Alliance; Kootenai Environmental Alliance; League of Conservation Voters; Lower Columbia Canoe Club; Maine Rivers; Michigan Environmental Council.

Michigan Hydro Relicensing Coalition; Mono Lake Committee; Mousam and Kennebunk Rivers Alliance; National Heritage Institute; National Park Conservation Association; National Wildlife Federation; Native Fish Society; Natural Heritage Institute; Natural Resources Defense Council; Naturaland Trust; North Cascades Conservation Council; Northwest Environmental Advocates; Northwest Resource Information Center; Oregon Kayak and Canoe Club; Oregon Natural Desert Association; Pacific Coast Federation of Fishermen's Associations; Pacific Rivers; Penobscot Paddle and Chowder Society; Planning and Conservation League.

Prarie Rivers Network; River Network; Riverkeeper Network; Rogue Riverkeeper; Save Our Wild Salmon; Save the Colorado; Selkirk Conservation Alliance; Southern Environmental Law Center; St. Mary's River Watershed Association; The Lands Council; The Mountaineers; The Sierra Club; Tributary Whitewater Tours, LLC; Tuolumne River Trust; Upstate Forever; Washington Environmental Law Center (see Western Environmental Law Center); Washington Wild; WaterWatch of Oregon; Wild Earth Guardians; Wild Earth Guardians; Wild Washington Rivers.

NATIONAL WILDLIFE FEDERATION,
NATIONAL ADVOCACY CENTER,
Washington, DC, November 7, 2017.

DEAR REPRESENTATIVE: The National Wildlife Federation, with over 6 million members and supporters and its affiliate organizations from 51 states and territories across the country, represents a broad diversity of political views, mirroring the nation. Regardless of party affiliation, these members want their families to be safe, their water to be clean, and ecosystems to be healthy in order to support our nation's wildlife. It is important, then, that any large-scale energy project, including hydroelectric, uphold those values as well. While NWF believes that the United States should pursue a renewable energy future, the country should do so while seeking to minimize harm to local ecosystems and wildlife and gather input from those near hydroelectric facility sites. This is especially important as hydropower is not without environmental impacts, including greenhouse gases released from reservoirs associated with dams. In order to weigh all impacts as well as the benefits, proper review processes should be followed and corners cannot be cut. Because of these long-held standards, NWF opposes H.R. 3043, the Hydropower Policy Modernization Act of 2017.

The National Wildlife Federation has long supported robust environmental review processes. Federal and state governments should approach projects with a genuine interest in determining negative effects on the environment, wildlife, and local communities. H.R. 3043 includes provisions that place arbitrary deadlines on project reviews, even when it is clear that a proper study will take longer. Unfortunately, this bill would remove our experts in natural resources from the review process and usurp states' rights to enforce their own standards for hydropower projects. Additionally, considerations of energy supply would be required alongside protections for endangered species, fisheries, and cultural sites, contradicting existing laws. If passed into law, H.R. 3043 would likely create confusion and litigation. We have seen in the past how large-scale hydroelectric projects have not always considered potential negative effects. We should learn from our past mistakes, not repeat them.

While there was a hearing on this bill, only the Federal Energy Regulatory Commission testified, leaving out important voices. Among those voices left out were tribal leaders, states, and local officials who will be required to abide by these new rules. Not only does this legislation limit input from those near proposed hydroelectric projects, but it also does so for those who live near existing dams seeking a permit renewal. This legislation would constrict the review processes for dams approaching their 50–year review mark. It is important to make sure that these projects, which were built before our current rules were put in place, remain up to the standards we set for human safety and minimal impact to the environment, economically important fisheries, and recreation sites.

In short, while this bill and its proponents claim to help our nation move toward a more sustainable and climate-friendly future, we need a system in place that can consider our energy needs in addition to the economic, environmental and cultural needs of our communities. Since climate change is the most significant challenge of our time, we urge the committee and supporters of this legislation to have a transparent and robust discussion, not only of our energy needs but also of potential impacts from hydropower such as wildlife and greenhouse gases. For all of these reasons, National Wildlife Federation recommends you oppose H.R. 3043.

Sincerely,

JIM LYON,
Vice President for Conservation Policy,
National Wildlife Federation.

OUTDOOR ALLIANCE,
November 6, 2017.

Re H.R. 3043, Hydropower Policy Modernization Act.

Hon. PAUL RYAN,
Speaker, House of Representatives,
Washington, DC.
Hon. NANCY PELOSI,
Minority Leader, House of Representatives,
Washington, DC.

DEAR SPEAKER RYAN AND MINORITY LEADER PELOSI: We are writing to ask you to oppose H.R. 3043, the Hydropower Policy Modernization Act. If enacted, this bill would have significant negative impacts on outdoor recreation and its associated local economic benefits and would remove opportunities for meaningful local public involvement in hydropower licensing.

Outdoor Alliance is a coalition of nine member-based organizations representing the human powered outdoor recreation community. The coalition includes Access Fund, American Canoe Association, American Whitewater, International Mountain Bicycling Association, Winter Wildlands Alliance, The Mountaineers, the American Alpine Club, the Mazamas, and Colorado Mountain Club and represents the interests of the millions of Americans who climb, paddle, mountain bike, and backcountry ski and snowshoe on our nation's public lands, waters, and snowscapes.

Our members directly participate in licensing processes for hydropower projects in partnership with state and federal resource agencies. The authorities granted to federal agencies under the Federal Power Act, Clean Water Act, and Endangered Species Act have helped ensure that hydropower operations balance our society's need for power with the benefits of flowing rivers. These benefits include important economic contributions generated through the outdoor recreation economy, and outdoor recreation may be one benefit of hydropower under certain circumstances.

Outdoor recreation powers a vast economic engine valued at $887 billion annually with much of this activity focused around water-based recreation, including rivers affected by

hydropower operations. The National Hydropower Association's own website, which promotes the benefits of hydropower, states that ''Swimming, boating, fishing, camping, skiing and hiking are just some of the recreational activities that take place yearround and across the country at sites developed and supported by the hydropower industry.''

We are concerned that H.R. 3043 will severely limit the ability of local communities to advocate for recreational benefits in hydropower licensing. If passed, H.R. 3043 will shift responsibilities away from states, federal land managers with locally-based recreation staff, and affected communities, and instead place exclusive authority within the hands of the Federal Energy Regulatory Commission (FERC). FERC is a regulatory agency with no local field staff, frequently with only the ability to participate in one or two site visits in all. As a result, FERC staff are unlikely to have experience and familiarity with local resources and values. The end result of H.R. 3043 would be outcomes that are detrimental to outdoor recreation and local communities.

While hydropower provides certain benefits, it also always comes with significant impacts. This legislation would upset an important balance and the cooperative approach to hydropower licensing that effectively ensures that the interests of local communities and their interests in outdoor recreation are represented. Outdoor Alliance finds the hydropower provisions of H.R. 3043 to be deeply problematic, and we oppose any effort to diminish the ability of citizens and public resource agencies to ensure that hydropower licenses include provisions to protect the public river resources that are important to them.

Best regards,

LOUIS GELTMAN,
Policy Director,
Outdoor Alliance.

TROUT UNLIMITED,
November 6, 2017.

Re Trout Unlimited opposes the ''Hydropower Policy Modernization Act of 2017'' (H.R. 3043) and we urge members of the House of Representatives to vote against this legislation.

DEAR REPRESENTATIVE: H.R. 3043 is due for House floor consideration this week. We urge you to reject the bill and instead to develop a bill worthy of broad stakeholder support.

Hydropower is an essential component of our nation's energy mix. Hydropower produces energy with low hydrocarbon emissions, but can and does cause massive impacts to watershed health and fisheries habitats. Striking a balance between power and nonpower values, such as fisheries habitat, is essential.

To that end, the Federal Power Act assigns oversight and conditioning roles for the natural resource agencies to ensure adequate protections or conditions related to project effects on underlying lands, waters and related resources. These authorities, in particular sections 18 and 4e of the Federal Power Act, and section 401 of the Clean Water Act, contain some of the most useful fisheries conservation provisions in state or federal statute and are critical to minimize and mitigate impacts to trout and salmon habitats, covering issues like fish passage, instream flow below the project and water quality and quantity issues.

H.R. 3043 would significantly disrupt efforts to balance power and nonpower values in the licensing process and for all the wrong reasons. If the goal of the bill is to make the licensing process more efficient and expeditious, Congress should support the funding and information needs of the resource agencies, not penalize or further constrain their participation. H.R. 3043 instead would hamstring tribes, states, and federal resource agencies from review and conditioning of FERC licensed hydropower projects by imposing overly restrictive timelines, adding new process hurdles for debating agency requirements on applicants, and greatly restricting the scope and basis on which resource agencies can require conditions or investments to protect non-power resources impacted by the project.

The harmful bill could not come at a worse time. Dozens of projects coming up for relicensing soon. Many of them haven't been reviewed since being originally licensed 30–50 years ago. It is more imperative now than ever to ensure strong review of these projects.

Instead of H.R. 3043 Congress should support smart process improvements that will benefit applicants and operators while supporting strong protections to balance nonpower values. Smart improvements would include support for incremental upgrades, promote ongoing investment and ongoing study during the life of licenses so that we aren't starting from scratch every 30 to 50 years. A smart approach would ensure that the regulatory requirements for states, tribes and federal resource agencies to permit and condition these projects is fully supported early in the process to reduce conflict and delay. H.R. 3043 misses these opportunities, focusing instead placing arbitrary constraints on environmental review and conditioning agency authorities that will result in increased conflict during licensing.

As we have said a number of times before, Congress should take adequate time to hear the views of the tribes, as well as the state and federal resource agencies about existing process hurdles and potential solutions before legislating changes to hydropower project licensing procedures and standards. Some in the industry blame delays and cost overruns on agency inaction and bad decisions, yet the committee has so far not called them to testify. If the committee wants to have a thoughtful legislative process, it needs to hear from the agencies who some claim to be the root of the problem. Although the Energy and Commerce committee and its subcommittee on Energy and Power held hearings on this bill and related hydropower legislation, those hearings did not include these constituencies. Again, we urge the committee and the House to take the time to do the deliberative process in the right way, and build broad support for bipartisan legislation.

The most balanced and efficient way to bring new hydropower online, is to ensure that the development is well-sited and appropriately mitigated from the start and to support and encourage early and often investment in evaluating and improving operations over time.

This bill fails the test of carefully balancing power and non-power values, such as trout and salmon fisheries and river restoration. Specifically, we urge the House to support and defend—and not weaken as this bill does—resource agency authorities and mandates—including the Clean Water Act, Endangered Species Act and Federal Power Act.

We urge you to vote against H.R. 3043.

Sincerely,

STEVE MOYER,
Vice President of Government Affairs.

NOVEMBER 7, 2017.

DEAR REPRESENTATIVE: On behalf of our millions of members and supporters nationwide, we are writing to urge you to oppose H.R. 3043, the Hydropower Policy Modernization Act. This bill is a devastating assault on our nation's rivers and the people and wildlife that depend upon them. Its passage would end 95 years of balance in hydropower licensing, tipping the scales against taxpayers and in favor of huge utilities.

Hydropower licenses are issued for up to 50 years. Many hydropower facilities that are coming up for relicensing now were first constructed before virtually all 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 for the damage to the environment, while still providing reliable electricity, only arises once in a generation or two.

The balance the Federal Power Act currently 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, H.R. 3043 upends that balance. Simply put, the bill is a massive giveaway to special interests at the expense of healthy rivers and the fish, wildlife, and people that depend upon them. If H.R. 3043 passes, power company profits will go to the head of the line, ahead of every other user.

We appreciate that the House Committee on Energy and Commerce heard testimony from recreational and conservation interests who raised serious concerns about its many provisions. Unfortunately, the Committee chose to make no changes to reflect the constructive suggestions that the Hydropower Reform Coalition put forward that would improve the licensing process while maintaining environmental protections. The Committee also failed to solicit testimony from states, tribes, and federal natural resource agencies whose authorities will be usurped by the Federal Energy Regulatory Commission (FERC) if H.R. 3043 is enacted. You are now being asked to vote on a bill that no state, tribe, or conservation organization publicly supports. The bill under consideration today will only benefit power companies at the expense of every other user of a waterway.

H.R. 3043 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. 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.

Other provisions of H.R. 3043, such as the changes to the Trial Type Hearing process for alternative conditions, the requirement that federal natural resource agencies conduct costly, wasteful and time consuming review of matters outside of their scope of expertise and jurisdiction, and the requirement that scientific decisions be made only by political appointees in Washington, DC are all examples of how H.R. 3043 tilts the balance toward the interests of power companies.

In order to protect clean water, irrigation, meeting tribal treaty and trust obligations, wildlife, recreational fishing, commercial

fishing, whitewater boating, water quality, municipal water supply, fire safety, flood control, or any other purpose other than generating power, we urge you to vote NO on H.R. 3043.

Sincerely,

American Packrafting Association; American Rivers; American Whitewater; Apalachicola Riverkeeper; Appalachian Mountain Club; Atlantic Salmon Federation; California Outdoors; California Sportfishing Protection Alliance; Center for Biological Diversity; Center for Environmental Law and Policy; Connecticut River Conservancy; Conservatives for Responsible Stewardship; Downeast Salmon Federation; Earthjustice; Earthworks; Endangered Habitats League; Endangered Species Coalition; Environmental Protection Information Center (EPIC); Foothill Conservancy; Friends of Butte Creek.

Golden West Women Flyfishers; Grand Riverkeeper Labrador; Green Latinos; High Country Conservation Advocates; Idaho Rivers United; Illinois Council of Trout Unlimited; Klamath Forest Alliance; Kootenai Environmental Alliance; League of Conservation Voters; Lower Columbia Canoe Club; Maine Rivers; Michigan Environmental Council; Michigan Hydro Relicensing Coalition; Mono Lake Committee; Mousam and Kennebunk Rivers Alliance; National Heritage Institute; National Park Conservation Association; National Wildlife Federation; Natural Resources Defense Council; Naturaland Trust.

North Cascades Conservation Council; Northwest Environmental Advocates; Oregon Kayak and Canoe Club; Pacific Coast Federation of Fishermen's Associations; Penobscot Paddle and Chowder Society; Planning and Conservation League; Prairie Rivers Network; River Alliance of Wisconsin; River Network; Riverkeeper Network; Rogue Riverkeeper; Save Our Wild Salmon; Save the Colorado; Selkirk Conservation Alliance; Southern Environmental Law Center; St. Mary's River Watershed Association; The Lands Council; The Sierra Club; Tributary Whitewater Tours, LLC; Tuolumne River Trust; Upstate Forever; Washington Environmental Law Center (see Western Environmental Law Center); Washington Wild; WaterWatch of Oregon; Wild Washington Rivers.

The Acting CHAIR. All time for general debate has expired.

Pursuant to the rule, the bill shall be considered for amendment under the 5-minute rule.

It shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce, printed in the bill. The committee amendment in the nature of a substitute shall be considered as read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 3043

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hydropower Policy Modernization Act of 2017''.

SEC. 2. HYDROPOWER REGULATORY IMPROVEMENTS.

(a) SENSE OF CONGRESS ON THE USE OF HYDROPOWER RENEWABLE RESOURCES.—It is the sense of Congress that—

(1) hydropower is a renewable resource for purposes of all Federal programs and is an essential source of energy in the United States; and

(2) the United States should increase substantially the capacity and generation of clean, renewable hydropower that would improve environmental quality in the United States.

(b) MODIFYING THE DEFINITION OF RENEWABLE ENERGY TO INCLUDE HYDROPOWER.—Section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) is amended—

(1) in subsection (a), by striking ''the following amounts'' and all that follows through paragraph (3) and inserting ''not less than 15 percent in fiscal year 2017 and each fiscal year thereafter shall be renewable energy.'' ; and

(2) in subsection (b), by striking paragraph (2) and inserting the following:

''(2) RENEWABLE ENERGY.—The term 'renewable energy' means electric energy generated from solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, or municipal solid waste, or from a hydropower project.''.

(c) PRELIMINARY PERMITS.—Section 5 of the Federal Power Act (16 U.S.C. 798) is amended—

(1) in subsection (a), by striking ''three'' and inserting ''4''; and

(2) by amending subsection (b) to read as follows:

''(b) The Commission may—

''(1) extend the period of a preliminary permit once for not more than 4 additional years beyond the 4 years permitted by subsection (a) if the Commission finds that the permittee has carried out activities under such permit in good faith and with reasonable diligence; and

''(2) if the period of a preliminary permit is extended under paragraph (1), extend the period of such preliminary permit once for not more than 4 additional years beyond the extension period granted under paragraph (1), if the Commission determines that there are extraordinary circumstances that warrant such additional extension.''.

(d) TIME LIMIT FOR CONSTRUCTION OF PROJECT WORKS.—Section 13 of the Federal Power Act (16 U.S.C. 806) is amended in the second sentence by striking ''once but not longer than two additional years'' and inserting ''for not more than 8 additional years,''.

(e) LICENSE TERM.—Section 15(e) of the Federal Power Act (16 U.S.C. 808(e)) is amended—

(1) by striking ''(e) Except'' and inserting the following:

''(e) LICENSE TERM ON RELICENSING.—

''(1) IN GENERAL.—Except''; and

(2) by adding at the end the following:

''(2) CONSIDERATION.—In determining the term of a license under paragraph (1), the Commission shall consider, among other things, project-related investments to be made by the licensee under a new license issued under this section, as well as project-related investments made by a licencee over the term of the existing license (including any terms under annual licenses). In considering such investments, the Commission shall give the same weight to—

''(A) investments to be made by the licensee to implement a new license issued under this section, including—

''(i) investments in redevelopment, new construction, new capacity, efficiency, modernization, rehabilitation, and safety improvements; and

''(ii) investments in environmental, recreation, and other protection, mitigation, or enhancement measures that will be required or authorized by the license; and

''(B) investments made by the licensee over the term of the existing license (including any terms under annual licenses), beyond those required by the existing license when issued, that—

''(i) resulted in, during the term of the existing license—

''(I) redevelopment, new construction, new capacity, efficiency, modernization, rehabilitation, or safety improvements; or

''(II) environmental, recreation, or other protection, mitigation, or enhancement measures; and

''(ii) did not result in the extension of the term of the existing license by the Commission.''.

(f) ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.—Section 33 of the Federal Power Act (16 U.S.C. 823d) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''deems'' and inserting ''determines'';

(B) in paragraph (2)(B), in the matter preceding clause (i), by inserting ''determined to be necessary'' before ''by the Secretary'';

(C) by striking paragraph (4); and

(D) by striking paragraph (5);

(2) in subsection (b)—

(A) by striking paragraph (4); and

(B) by striking paragraph (5); and

(3) by adding at the end the following:

''(c) FURTHER CONDITIONS.—This section applies to any further conditions or prescriptions proposed or imposed pursuant to section 4(e), 6, or 18.''.

SEC. 3. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

(a) HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.—Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

''SEC. 34. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

''(a) DEFINITION.—In this section, the term 'Federal authorization'—

''(1) means any authorization required under Federal law with respect to an application for a license under this part; and

''(2) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law to approve or implement the license under this part.

''(b) DESIGNATION AS LEAD AGENCY.—

''(1) IN GENERAL.—The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(2) OTHER AGENCIES AND INDIAN TRIBES.—

''(A) IN GENERAL.—Each Federal, State, and local government agency and Indian tribe considering an aspect of an application for Federal authorization shall coordinate with the Commission and comply with the deadline established in the schedule developed for the license under this part in accordance with the rule issued by the Commission under subsection (c).

''(B) IDENTIFICATION.—The Commission shall identify, as early as practicable after it is notified by the applicant for a license under this part, any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for a Federal authorization.

''(C) NOTIFICATION.—

''(i) IN GENERAL.—The Commission shall notify any agency and Indian tribe identified under subparagraph (B) of the opportunity to participate in the process of reviewing an aspect of an application for a Federal authorization.

''(ii) DEADLINE.—Each agency and Indian tribe receiving a notice under clause (i) shall submit a response acknowledging receipt of the notice to the Commission within 30 days of receipt of such notice and request.

''(D) ISSUE IDENTIFICATION AND RESOLUTION.—

''(i) IDENTIFICATION OF ISSUES.—Federal, State, and local government agencies and Indian tribes that may consider an aspect of an application for Federal authorization shall identify, as early as possible, and share with the Commission and the applicant, any issues of concern identified during the pendency of the Commission's action under this part relating to any Federal authorization that may delay or prevent the granting of such authorization, including any issues that may prevent the agency

or Indian tribe from meeting the schedule established for the license under this part in accordance with the rule issued by the Commission under subsection (c).

''(ii) ISSUE RESOLUTION.—The Commission may forward any issue of concern identified under clause (i) to the heads of the relevant State and Federal agencies (including, in the case of an issue of concern identified by a State or local government agency or Indian tribe, the Federal agency overseeing the delegated authority, or the Secretary of the Interior with regard to an issue of concern identified by an Indian tribe, as applicable) for resolution. If the Commission forwards an issue of concern to the head of a relevant agency, the Commission and the relevant agency shall enter into a memorandum of understanding to facilitate interagency coordination and resolution of such issues of concern, as appropriate.

''(c) SCHEDULE.—

''(1) COMMISSION RULEMAKING TO ESTABLISH PROCESS TO SET SCHEDULE.—Not later than 180 days after the date of enactment of this section the Commission shall, in consultation with the appropriate Federal agencies, issue a rule, after providing for notice and public comment, establishing a process for setting a schedule following the filing of an application under this part for a license for the review and disposition of each Federal authorization.

''(2) ELEMENTS OF SCHEDULING RULE.—In issuing a rule under this subsection, the Commission shall ensure that the schedule for each Federal authorization—

''(A) includes deadlines for actions by—

''(i) any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for the Federal authorization;

''(ii) the applicant;

''(iii) the Commission; and

''(iv) other participants in any applicable proceeding;

''(B) is developed in consultation with the applicant and any agency and Indian tribe that submits a response under subsection (b)(2)(C)(ii);

''(C) provides an opportunity for any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for the applicable Federal authorization to identify and resolve issues of concern, as provided in subsection (b)(2)(D);

''(D) complies with applicable schedules established under Federal and State law;

''(E) ensures expeditious completion of all proceedings required under Federal and State law, to the extent practicable; and

''(F) facilitates completion of Federal and State agency studies, reviews, and any other procedures required prior to, or concurrent with, the preparation of the Commission's environmental document required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(d) TRANSMISSION OF FINAL SCHEDULE.—

''(1) IN GENERAL.—For each application for a license under this part, the Commission shall establish a schedule in accordance with the rule issued by the Commission under subsection (c). The Commission shall publicly notice and transmit the final schedule to the applicant and each agency and Indian tribe identified under subsection (b)(2)(B).

''(2) RESPONSE.—Each agency and Indian tribe receiving a schedule under this subsection shall acknowledge receipt of such schedule in writing to the Commission within 30 days.

''(e) ADHERENCE TO SCHEDULE.—All applicants, other licensing participants, and agencies and Indian tribes considering an aspect of an application for a Federal authorization shall meet the deadlines set forth in the schedule established pursuant to subsection (d)(1).

''(f) APPLICATION PROCESSING.—The Commission, Federal, State, and local government agencies, and Indian tribes may allow an applicant seeking a Federal authorization to fund a third-party contractor selected by such an agency or tribe to assist in reviewing the application. All costs of an agency or tribe incurred pursuant to direct funding by the applicant, including all costs associated with the third party contractor, shall not be considered costs of the United States for the administration of this part under section 10(e).

''(g) COMMISSION RECOMMENDATION ON SCOPE OF ENVIRONMENTAL REVIEW.—For the purposes of coordinating Federal authorizations for each license under this part, the Commission shall consult with and make a recommendation to agencies and Indian tribes receiving a schedule under subsection (d) on the scope of the environmental review for all Federal authorizations for such license. Each Federal and State agency and Indian tribe shall give due consideration and may give deference to the Commission's recommendations, to the extent appropriate under Federal law.

''(h) EXTENSION OF DEADLINE.—

''(1) APPLICATION.—A Federal, State, or local government agency or Indian tribe that is unable to complete its disposition of a Federal authorization by the deadline set forth in the schedule established under subsection (d)(1) shall, not later than 30 days prior to such deadline, file for an extension with the Commission.

''(2) EXTENSION.—The Commission shall only grant an extension filed for under paragraph (1) if the agency or Indian tribe demonstrates, based on the record maintained under subsection (i), that complying with the schedule established under subsection (d)(1) would prevent the agency or tribe from complying with applicable Federal or State law. If the Commission grants the extension, the Commission shall set a reasonable schedule and deadline, that is not later than 90 days after the deadline set forth in the schedule established under subsection (d)(1), for the agency or tribe to complete its disposition of the Federal authorization.

''(i) CONSOLIDATED RECORD.—The Commission shall, with the cooperation of Federal, State, and local government agencies and Indian tribes, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State or local government agency or officer or Indian tribe acting under delegated Federal authority) with respect to any Federal authorization. Such record shall constitute the record for judicial review under section 313(b).

''(j) SUBMISSION OF LICENSE RECOMMENDATIONS, CONDITIONS, AND PRESCRIPTIONS.—

''(1) SUBMISSION OF RECOMMENDATIONS.—Any Federal or State agency that is providing recommendations with respect to a license proceeding under this part shall submit to the Commission for inclusion in the consolidated record relating to the license proceeding maintained under subsection (i)—

''(A) the recommendations;

''(B) the rationale for the recommendations; and

''(C) any supporting materials relating to the recommendations.

''(2) WRITTEN STATEMENT.—In a case in which a Federal agency is making a determination with respect to a covered measure (as defined in section 35(a)), the head of the Federal agency shall submit to the Commission for inclusion in the consolidated record, in addition to the information required under paragraph (1), a written statement demonstrating that the Federal agency gave equal consideration to the effects of the covered measure on—

''(A) energy supply, distribution, cost, and use;

''(B) flood control;

''(C) navigation;

''(D) water supply; and

''(E) air quality and the preservation of other aspects of environmental quality.

''(3) INFORMATION FROM OTHER AGENCIES.—In preparing a written statement under paragraph (2), the head of a Federal agency may make use of information produced or made available by other agencies with relevant expertise in the factors described in subparagraphs (A) through (E) of that paragraph.

''(k) DELEGATION.—A Secretary may delegate the authority to determine a condition to be necessary under section 4(e), or to prescribe a fishway under section 18, to an officer of the applicable department based, in part, on the ability of the officer to evaluate the broad effects of such condition or prescription on—

''(1) the applicable project; and

''(2) the factors described in subparagraphs (A) through (E) of subsection (j)(2).

''(l) NO EFFECT ON OTHER LAWS.—Nothing in this section shall be construed to affect any requirement of the Federal Water Pollution Control Act, the Fish and Wildlife Coordination Act, the Endangered Species Act of 1973, section 14 of the Act of March 3, 1899 (commonly known as the Rivers and Harbors Appropriation Act of 1899), and those provisions in subtitle III of title 54, United States Code commonly known as the National Historic Preservation Act, with respect to an application for a license under this part.

''SEC. 35. TRIAL-TYPE HEARINGS.

''(a) DEFINITION OF COVERED MEASURE.—In this section, the term 'covered measure' means—

''(1) a condition determined to be necessary under section 4(e), including an alternative condition proposed under section 33(a);

''(2) fishways prescribed under section 18, including an alternative prescription proposed under section 33(b); or

''(3) any action by the Secretary to exercise reserved authority under the license to prescribe, submit, or revise any condition to a license under the first proviso of section 4(e) or fishway prescribed under section 18.

''(b) AUTHORIZATION OF TRIAL-TYPE HEARING.—An applicant for a license under this part (including an applicant for a license under section 15) and any party to a license proceeding shall be entitled to a determination on the record, after opportunity for a trial-type hearing of not more than 120 days, on any disputed issues of material fact with respect to an applicable covered measure.

''(c) DEADLINE FOR REQUEST.—A request for a trial-type hearing under this section shall be submitted not later than 60 days after the date on which, as applicable—

''(1) the Secretary determines the condition to be necessary under section 4(e) or prescribes the fishway under section 18; or

''(2) the Secretary exercises reserved authority under the license to prescribe, submit, or revise any condition to a license under the first proviso of section 4(e) or fishway prescribed under section 18, as appropriate.

''(d) NO REQUIREMENT TO EXHAUST.—By electing not to request a trial-type hearing under subsection (c), a license applicant and any other party to a license proceeding shall not be considered to have waived the right of the applicant or other party to raise any issue of fact or law in a non-trial-type proceeding, but no issue may be raised for the first time on rehearing or judicial review of the license decision of the Commission.

''(e) ADMINISTRATIVE LAW JUDGE.—

''(1) IN GENERAL.—All disputed issues of material fact raised by a party in a request for a trial-type hearing submitted under subsection (c) shall be determined in a single trial-type hearing to be conducted by an Administrative Law Judge within the Office of Administrative Law Judges and Dispute Resolution of the Commission, in accordance with the Commission rules of practice and procedure under part 385 of title 18, Code of Federal Regulations (or successor regulations), and within the timeframe established by the Commission for each license proceeding (including a proceeding for a license under section 15) under section 34(d).

''(2) REQUIREMENT.—The trial-type hearing shall include the opportunity—

''(A) to undertake discovery; and

''(B) to cross-examine witnesses, as applicable.

''(f) STAY.—The Administrative Law Judge may impose a stay of a trial-type hearing under this section for a period of not more than 120 days to facilitate settlement negotiations relating to resolving the disputed issues of material fact with respect to the covered measure.

''(g) DECISION OF THE ADMINISTRATIVE LAW JUDGE.—

''(1) CONTENTS.—The decision of the Administrative Law Judge shall contain—

''(A) findings of fact on all disputed issues of material fact;

''(B) conclusions of law necessary to make the findings of fact, including rulings on materiality and the admissibility of evidence; and

''(C) reasons for the findings and conclusions.

''(2) LIMITATION.—The decision of the Administrative Law Judge shall not contain conclusions as to whether—

''(A) any condition or prescription should be adopted, modified, or rejected; or

''(B) any alternative condition or prescription should be adopted, modified, or rejected.

''(3) FINALITY.—A decision of an Administrative Law Judge under this section with respect to a disputed issue of material fact shall not be subject to further administrative review.

''(4) SERVICE.—The Administrative Law Judge shall serve the decision on each party to the hearing and forward the complete record of the hearing to the Commission and the Secretary that proposed the original condition or prescription.

''(h) SECRETARIAL DETERMINATION.—

''(1) IN GENERAL.—Not later than 60 days after the date on which the Administrative Law Judge issues the decision under subsection (g) and in accordance with any applicable schedule established by the Commission under section 34(d), the Secretary proposing a covered measure shall file with the Commission a final determination to adopt, modify, or withdraw any condition or prescription that was the subject of a hearing under this section, based on the decision of the Administrative Law Judge.

''(2) RECORD OF DETERMINATION.—The final determination of the Secretary filed with the Commission shall identify the reasons for the decision and any considerations taken into account that were not part of, or were inconsistent with, the findings of the Administrative Law Judge and shall be included in the consolidated record maintained under section 34(i).

''(i) RESOLUTION OF MATTERS.—Notwithstanding sections 4(e) and 18, if the Commission finds that a final determination under (h)(1) of the Secretary is inconsistent with the purposes of this part or other applicable law, the Commission may enter into a memorandum of understanding with the Secretary to facilitate interagency coordination and resolve the matter.

''(j) JUDICIAL REVIEW.—The decision of the Administrative Law Judge and the record of determination of the Secretary shall be included in the record of the applicable licensing proceeding and subject to judicial review of the final licensing decision of the Commission under section 313(b).

''SEC. 36. LICENSING STUDY IMPROVEMENTS.

''(a) IN GENERAL.—To facilitate the timely and efficient completion of the license proceedings under this part, the Commission shall, in consultation with applicable Federal and State agencies and interested members of the public—

''(1) compile current and accepted best practices in performing studies required in such license proceedings, including methodologies and the design of studies to assess the full range of environmental impacts of a project that reflect the most recent peer-reviewed science;

''(2) compile a comprehensive collection of studies and data accessible to the public that could be used to inform license proceedings under this part; and

''(3) encourage license applicants, agencies, and Indian tribes to develop and use, for the purpose of fostering timely and efficient consideration of license applications, a limited number of open-source methodologies and tools applicable across a wide array of projects, including water balance models and streamflow analyses.

''(b) USE OF STUDIES.—To the extent practicable, the Commission and other Federal, State, and local government agencies and Indian tribes considering an aspect of an application for Federal authorization (as defined in section 34) shall use studies and data based on current, accepted science in support of their actions. Any participant in a proceeding with respect to such a Federal authorization shall demonstrate that a study requested by the participant is not duplicative of current, existing studies that are applicable to the project.

''(c) INTRA-WATERSHED REVIEW.—The Commission shall establish a program to develop comprehensive plans, at the request of project applicants, on a watershed-wide scale, in consultation with the applicants, appropriate Federal agencies, and affected States, local governments, and Indian tribes, in watersheds with respect to which there are more than one application for a project. Upon such a request, the Commission, in consultation with the applicants, such Federal agencies, and affected States, local governments, and Indian tribes, may conduct or commission watershed-wide environmental studies, with the participation of at least 2 applicants. Any study conducted under this subsection shall apply only to a project with respect to which the applicants participate.

''SEC. 37. LICENSE AMENDMENT IMPROVEMENTS.

''(a) QUALIFYING PROJECT UPGRADES.—

''(1) IN GENERAL.—As provided in this section, the Commission may approve an application under this section for an amendment to a license issued under this part for a qualifying project upgrade.

''(2) APPLICATION.—A licensee filing an application for an amendment to a project license, for which the licensee is seeking approval as a qualified project upgrade under this section, shall include in such application information sufficient to demonstrate that the proposed change to the project described in the application is a qualifying project upgrade.

''(3) NOTICE AND INITIAL DETERMINATION ON QUALIFICATION.—Not later than 30 days after receipt of an application under paragraph (2), the Commission, in consultation with other Federal agencies, States, and Indian tribes the Commission determines appropriate, shall publish in the Federal Register a notice containing—

''(A) notice of the application filed under paragraph (2);

''(B) an initial determination as to whether the proposed change to the project described in the application for a license amendment is a qualifying project upgrade; and

''(C) a request for public comment on the application and the initial determination.

''(4) PUBLIC COMMENT AND CONSULTATION.—The Commission shall, for a period of 45 days beginning on the date of publication of a notice under paragraph (3)—

''(A) accept public comment regarding the application and whether the proposed license amendment is for a qualifying project upgrade; and

''(B) consult with each Federal, State, and local government agency and Indian tribe considering an aspect of an application for any authorization required under Federal law with respect to the proposed license amendment, as well as other interested agencies and Indian tribes.

''(5) FINAL DETERMINATION ON QUALIFICATION.—Not later than 15 days after the end of the public comment and consultation period under paragraph (4), the Commission shall publish in the Federal Register a final determination as to whether the proposed license amendment is for a qualifying project upgrade.

''(6) FEDERAL AUTHORIZATIONS.—In establishing the schedule for a proposed license amendment for a qualifying project upgrade, the Commission shall require final disposition of all authorizations required under Federal law with respect to an application for such license amendment, other than final action by the Commission, by not later than 120 days after the date on which the Commission publishes a final determination under paragraph (5) that the proposed license amendment is for a qualifying project upgrade.

''(7) COMMISSION ACTION.—Not later than 150 days after the date on which the Commission publishes a final determination under paragraph (5) that a proposed license amendment is for a qualifying project upgrade, the Commission shall take final action on the license amendment application.

''(8) LICENSE AMENDMENT CONDITIONS.—Any condition or prescription included in or applicable to a license amendment for a qualifying project upgrade approved under this subsection, including any condition, prescription, or other requirement of a Federal authorization, shall be limited to those that are—

''(A) necessary to protect public safety; or

''(B) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources, water supply, and water quality that are directly caused by the construction and operation of the qualifying project upgrade, as compared to the environmental baseline existing at the time the Commission approves the application for the license amendment.

''(9) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall, after notice and opportunity for public comment, issue a rule to implement this subsection.

''(10) DEFINITIONS.—For purposes of this subsection:

''(A) QUALIFYING PROJECT UPGRADE.—The term 'qualifying project upgrade' means a change to a project licensed under this part that meets the qualifying criteria, as determined by the Commission.

''(B) QUALIFYING CRITERIA.—The term 'qualifying criteria' means, with respect to a project licensed under this part, a change to the project that—

''(i) if carried out, would be unlikely to adversely affect any species listed as threatened or endangered under the Endangered Species Act of 1973 or result in the destruction or adverse modification of critical habitat, as determined in consultation with the Secretary of the Interior or Secretary of Commerce, as appropriate, in accordance with section 7 of the Endangered Species Act of 1973;

''(ii) is consistent with any applicable comprehensive plan under section 10(a)(2);

''(iii) includes only changes to project lands, waters, or operations that, in the judgment of the Commission, would result in only insignificant or minimal cumulative adverse environmental effects;

''(iv) would be unlikely to adversely affect water quality or water supply; and

''(v) proposes to implement—

''(I) capacity increases, efficiency improvements, or other enhancements to hydropower generation at the licensed project;

''(II) environmental protection, mitigation, or enhancement measures to benefit fish and wildlife resources or other natural and cultural resources; or

''(III) improvements to public recreation at the licensed project.

''(b) AMENDMENT APPROVAL PROCESSES.—

''(1) RULE.—Not later than 1 year after the date of enactment of this section, the Commission shall, after notice and opportunity for public comment, issue a rule establishing new standards and procedures for license amendment applications under this part. In issuing such rule, the Commission shall seek to develop

the most efficient and expedient process, consultation, and review requirements, commensurate with the scope of different categories of proposed license amendments. Such rule shall account for differences in environmental effects across a wide range of categories of license amendment applications.

''(2) CAPACITY.—In issuing a rule under this subsection, the Commission shall take into consideration that a change in generating or hydraulic capacity may indicate the potential environmental effects of a proposed license amendment but is not determinative of such effects.

''(3) PROCESS OPTIONS.—In issuing a rule under this subsection, the Commission shall take into consideration the range of process options available under the Commission's regulations for license applications and adapt such options to amendment applications, where appropriate.''.

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

(a) LICENSES.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended—

(1) by striking ''adequate protection and utilization of such reservation'' and all that follows through ''That no license affecting the navigable capacity'' and inserting ''adequate protection and utilization of such reservation: Provided further, That no license affecting the navigable capacity''; and

(2) by striking ''deem'' and inserting ''determine''.

(b) OPERATION OF NAVIGATION FACILITIES.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by striking the second, third, and fourth sentences.

The Acting CHAIR. No amendment to the committee amendment in the nature of a substitute shall be in order except those printed in House Report 115–391. Each such amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. GROTHMAN

The Acting CHAIR. It is now in order to consider amendment No. 1 printed in House Report 115–391.

Mr. GROTHMAN. Mr. Chair, as the designee of my friend and colleague, Mr. POCAN, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end of the bill, add the following new section:

SEC. 5. CONSIDERATION OF INVASIVE SPECIES.

Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by inserting after ''the Secretary of Commerce.'' the following: ''In prescribing a fishway, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall consider the threat of invasive species.''.

The Acting CHAIR. Pursuant to House Resolution 607, the gentleman from Wisconsin (Mr. GROTHMAN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Wisconsin.

Mr. GROTHMAN. Mr. Chair, first of all, I would like to thank the chair and ranking member for their collaborative effort to bring this bill forward.

This amendment, which is supported by colleagues on both sides of the aisle, is pretty simple. It requires Federal decisionmakers in the Department of the Interior to consider the threat of invasive species when installing fishways.

This was brought to my attention while looking at a dam on the Wisconsin River in Wisconsin. Below that dam, we had Asian carp, an invasive species, a huge fish. If that fish was able to get further north on the Wisconsin River, because of a fishway, you could wind up with this invasive species not only in the northern part of the river, but, and quite frankly, in dozens of lakes throughout northern Wisconsin.

As a matter of fact, given where that dam is, if there is even flooding, that invasive species could wind up working its way into Lake Michigan and up the Saint Lawrence Seaway. It is very important that before the Department of the Interior listens to certain environmentalists, they realize that a fishway at this dam would result in big trouble.

Because of the devastating effects invasive species can have on the environment, local fish population, and the economy, this amendment will ensure the Federal agencies take into account all consequences before installing fishways.

Mr. Chair, I include in the RECORD a letter from Alliant Energy.

ALLIANT ENERGY,
November 8, 2017.

Hon. MARK POCAN,
Member of Congress, House of Representatives, Washington, DC.

Hon. GLENN GROTHMAN,
Member of Congress, House of Representatives, Washington, DC.

DEAR REPRESENTATIVES POCAN AND GROTHMAN: I am writing in strong support of your invasive species amendment to H.R. 3043, the Hydropower Modernization Act of 2017, which is due to be considered on the floor of the U.S. House today. Alliant Energy deeply appreciates your commitment to this pro-environment measure, and for protecting Wisconsin's watersheds.

As you know, an Alliant subsidiary, Wisconsin Power and Light, owns and operates a dam located in Prairie du Sac, Wisconsin, on the Wisconsin River. The Prairie du Sac dam, now over 100 years old, is responsible for the formation of Lake Wisconsin, which serves as an enormous recreational and wildlife resource for our state.

Over a decade ago, the U.S. Fish and Wildlife Service sought to impose a fishway requirement on the license for the dam, essentially calling for a ''fishway'' to be installed to allow for the upstream migration of native fish. Since that time, however, scientists and state officials have discovered the existence of non-native, invasive fish species (Asian carp) at the base of the dam. If a fishway were now installed, it seems clear that these invasive species would also be able to migrate—and thereby endanger native fish populations upstream, including Lake Wisconsin.

Your amendment would ensure that, in this particular case, the U.S. Fish and Wildlife Service would be required to consider the threats posed by invasive species before imposing a fishway condition on a hydroelectric license. We believe strongly that such decisions should be predicated on the most up to date information available, and your amendment will help guarantee that invasive species are not permitted to threaten the Lake Wisconsin watershed.

Again, thank you for offering your amendment. Please let me know how Alliant may assist you in ushering this much-needed provision into public law.

Sincerely,

DAVID DE LEON,
Vice President Operations—Wisconsin, Alliant Energy.

Mr. UPTON. Will the gentleman yield?

Mr. GROTHMAN. Mr. Chair, I yield to the gentleman from Michigan.

Mr. UPTON. Mr. Chair, I just want to say that this is a very good amendment. It is bipartisan. It is critical that—I know our Great Lakes Caucus, on a bipartisan basis, in both bodies, the House and Senate, have taken strong actions against the Asian carp.

This is a good amendment. We are certainly prepared to accept it, and I commend you for taking the time on the floor.

Ms. MOORE. Will the gentleman yield?

Mr. GROTHMAN. Mr. Chair, I yield to the gentlewoman from Wisconsin.

Ms. MOORE. Mr. Chairman, I thank my colleague from the Badger State for yielding to me. I am so pleased to join him, along with Representative MARK POCAN, in support of this amendment.

It is critical, Mr. Chairman. Wisconsinites value our natural resources like no other. The Great Lakes are an immense source of regional pride as well as a great economic engine for our region, and we know that these resources are constantly under attack from a variety of threats. One particularly nefarious threat is invasive species.

My colleagues and I are all aware of the costs these species impose. These costs are something that, unfortunately, the Great Lakes region knows too well. From the sea lamprey to the zebra mussel, to the carnivorous Asian carp now advancing toward the region, we have spent hundreds of millions of dollars dealing with the damage created when these invasive and nuisance species get into the Great Lakes ecosystem; and keeping them out of the Great Lakes in the first place is the most effective strategy.

A stitch in time saves nine, so I am pleased that this is a bipartisan amendment. I want to emphasize that the amendment does not predetermine any particular outcome or decision.

There is no magic bullet, Mr. Chairman, to the problem of invasive species given that there are so many pathways for them to get into a body of water, including through ballast water, but this commonsense amendment gives us a more effective tool in that fight.

Mr. Chairman, I support this amendment, and I urge my colleagues to vote for it.

Mr. RUSH. Will the gentleman yield?

Mr. GROTHMAN. I yield to the gentleman from Illinois.

Mr. RUSH. Mr. Chair, the minority side is prepared to accept this amendment.

Mr. GROTHMAN. Mr. Chair, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Wisconsin (Mr. GROTHMAN).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. BABIN

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in House Report 115–391.

Mr. BABIN. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end of the bill, add the following new section:

SEC. 5. EXAMINATION OF LICENSES FOR PROJECTS LOCATED IN DISASTER AREAS.

Not later than one year after the date of enactment of this Act, the Federal Energy Regulatory Commission may examine the license issued by the Commission under part I of the Federal Power Act for any project that is located in an area that was declared by the President to be a disaster area in 2017.

The Acting CHAIR. Pursuant to House Resolution 607, the gentleman from Texas (Mr. BABIN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. BABIN. Mr. Chairman, when a disaster like Hurricane Harvey strikes, the most important job we have is to assist those in harm's way.

From the Texas National Guard to the Louisiana Cajun Navy, to countless volunteers and citizens who have volunteered and contributed their time, their money, and their prayers, we saw across southeast Texas, in the immediate aftermath of that storm, nothing less than a model to which the whole Nation and world can aspire.

I have even compared the rescue of so many Texans by boat to the miracle at Dunkirk.

But when the storm passes, it is just as important that we look for lessons, demand accountability, and work to fix whatever went wrong or may have made this situation worse.

I am pleased to offer this amendment today that will begin to address such an issue.

When a hydropower station is licensed and regulated by FERC, it is not just the power plant that falls under Federal control. Decisions about lake levels, flood storage capacity, and other measurements of the body of water that powers that station are set forth in FERC license protocols and guidelines written and administered by folks who work right here in Washington.

□ 1500

As a former official for the Texas Lower Neches Valley River Authority, I know that these are tough decisions to make, and sometimes it is a matter of choosing between bad and worse options of where to put all of that water.

But in my district, serious concerns have been raised by my constituents and local river authorities about whether FERC's licenses for hydropower facilities need to be adjusted to account for the unprecedented flooding that we just experienced and with the ability to make commonsense changes in the face of an impending flood event.

My amendment ensures that nothing will stand in the way of FERC going in and examining the licenses for any facility located in the path of the terrible disasters that we have seen this year. By passing it with strong bipartisan support, we will make clear that that is just what FERC should do.

Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. UPTON) and introduce someone who is now famous in Texas, Uncle FRED UPTON, now that the Astros have won the World Series.

Mr. UPTON. Mr. Chairman, I thank the gentleman for yielding. And, yes, I do have, now, extended family in Texas.

Mr. Chairman, this is another tool in the toolbox for FERC. We want to make sure that areas are protected that have survived, somehow, these terrible hurricanes.

Mr. Chairman, I urge all of my colleagues on a bipartisan basis to support this good amendment.

Mr. BABIN. Mr. Chairman, I yield the balance of my time to the gentleman from Louisiana (Mr. HIGGINS), my next-door neighbor and cosponsor of this amendment.

Mr. HIGGINS of Louisiana. Mr. Chairman, I rise today in support of amendment No. 2 to the Hydropower Policy Modernization Act of 2017, offered by my friend, Representative BABIN of Texas.

My colleague's amendment, of which I am a cosponsor, is a commonsense addition to this important piece of legislation, which will allow the government to take more reasonable steps to mitigate the damages of flooding and hurricanes.

Mr. Chairman, I participated in rescue operations in Texas in the immediate wake of Hurricane Harvey. The last rescue I personally responded to was early on Friday, around 1 or 2 in the morning, less than 2 days after Harvey's landfall.

The elderly gentleman we rescued told me something I will never forget. With tears in his eyes, he said: Sir, I have lived in my home since 1968 and it never flooded. In 50 years, I have seen this much water fall, but I have never seen this much water rise.

Mr. Chairman, no one in this body batted an eye when we approved hundreds of billions of dollars in emergency appropriations relief to the victims of this year's hurricane season. It is time we as the people's House move past the reactionary era of addressing the need to repeal and rebuild after natural disasters and start focusing on proactive solutions to mitigate potential damage before natural disasters.

A proactive spirit should be fully implemented in our regulations and how we invest in infrastructure. If we had invested, over the last few decades, just a small percentage of the people's treasure that we have granted postdisaster as emergency relief appropriations into premitigation efforts, such as the cleaning and maintenance of our existing water management systems, both natural and man-made, much of the resulting damage would not have occurred and many fewer American families would have suffered.

Representative BABIN's amendment will allow a procedural tool for the FERC to review licenses for any project located in a region declared by the President to be a disaster area, which will allow us to better and more strategically manage our dams, floodgates, and reservoirs when we know storms like Hurricane Harvey are imminent.

Mr. Chairman, I thank Congressman BABIN for introducing this amendment, and I urge my colleagues on both sides of the aisle to support this commonsense solution, as well as the underlying bill.

Mr. RUSH. Will the gentleman yield?

Mr. BABIN. I yield to the gentleman from Illinois.

Mr. RUSH. Mr. Chairman, the minority is prepared to accept this amendment.

Mr. BABIN. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR (Mr. ESTES of Kansas). The question is on the amendment offered by the gentleman from Texas (Mr. BABIN).

The amendment was agreed to.

AMENDMENT NO. 3 OFFERED BY MR. JENKINS OF WEST VIRGINIA

The Acting CHAIR. It is now in order to consider amendment No. 3 printed in House Report 115–391.

Mr. JENKINS of West Virginia. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end of the bill, add the following new section:

SEC. 5. STUDIES FOR NON-FEDERAL HYDROPOWER.

Notwithstanding any other provision of law, if the Federal Energy Regulatory Commission has in place a memorandum of understanding with another Federal agency for non-federal hydropower with respect to a project licensed under part I of the Federal Power Act (regardless of explicit Congressional authorization for such non-federal hydropower), the other Federal agency may fully study and review the potential expansion of such non-federal hydropower at the project, including a review of seasonal pool levels and slowing flood releases.

The Acting CHAIR. Pursuant to House Resolution 607, the gentleman from West Virginia (Mr. JENKINS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from West Virginia.

Mr. JENKINS of West Virginia. Mr. Chairman, my amendment is very straightforward. It supports the mission of the underlying bill to responsibly increase opportunities for hydropower across the Nation.

My amendment authorizes agencies with an existing memorandum of understanding with FERC to study the expansion of hydropower. The need for this arises from a project in my district in Summersville, West Virginia. There is what is called a run-of-the-river hydroelectric project in Summersville. There is an MOU between the town—the city of Summersville—FERC, and the Army Corps of Engineers.

The Summersville hydro project was actually licensed by FERC in 1992 and constructed in 2001, with the cooperation of the Army Corps of Engineers. It provides enough renewable energy to power 22,000 homes. It might be possible to increase hydropower by adjusting the seasonable pool levels and managing the releases. Even if this is only for just a few days, it could result in a 15 percent increase in power generation for the surrounding community.

Unfortunately, I have heard that even to conduct a study requires explicit authorization from Congress. So that is what we are doing here today with this amendment. This amendment would provide that authority, and only in limited cases where there is an existing MOU on the books between the agencies and FERC.

Mr. Chairman, I yield 30 seconds to the gentleman from Michigan (Mr. UPTON).

Mr. UPTON. Mr. Chairman, I thank my friend from West Virginia for yielding.

Mr. Chairman, this is an amendment that allows for a study of the potential to expand non-Federal hydropower projects in Federal dams. It is a good amendment. I support it, and I urge my colleagues to support it on a bipartisan basis.

Mr. RUSH. Will the gentleman yield?

Mr. JENKINS of West Virginia. I yield to the gentleman from Illinois.

Mr. RUSH. Mr. Chairman, the minority is prepared to support this amendment.

Mr. JENKINS of West Virginia. Mr. Chairman, I thank the minority very much for their support on this and, again, to the chair, for his leadership on this effort.

Mr. Chairman, let me close by thanking specifically a couple of individuals:

Jim Price, who has been integrally related and involved with this project from its inception, and I appreciate his leadership so much.

Enel Green Power North America, the operator and developer on this project. I thank them for their efforts.

Also, the mayor of the city of Summersville, Robert Shafer. I thank Bob Shafer for his incredible support and leadership in the city of Summersville.

Mr. Chairman, I encourage support for this amendment, and I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from West Virginia (Mr. JENKINS).

The amendment was agreed to.

AMENDMENT NO. 4 OFFERED BY MR. RUSH

The Acting CHAIR. It is now in order to consider amendment No. 4 printed in House Report 115–391.

Mr. RUSH. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hydropower Policy Modernization Act of 2017''.

SEC. 2. HYDROPOWER REGULATORY IMPROVEMENTS.

(a) SENSE OF CONGRESS ON THE USE OF HYDROPOWER RENEWABLE RESOURCES.—It is the sense of Congress that—

(1) hydropower is a renewable resource for purposes of all Federal programs and is an essential source of energy in the United States; and

(2) the United States should increase substantially the capacity and generation of clean, renewable hydropower that would improve environmental quality in the United States.

(b) MODIFYING THE DEFINITION OF RENEWABLE ENERGY TO INCLUDE HYDROPOWER.—Section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) is amended—

(1) in subsection (a), by amending paragraphs (1) through (3) to read as follows:

''(1) Not less than 17 percent in fiscal years 2017 through 2019.

''(2) Not less than 20 percent in fiscal years 2020 through 2024.

''(3) Not less than 25 percent in fiscal year 2025 and each fiscal year thereafter.''; and

(2) in subsection (b), by striking paragraph (2) and inserting the following:

''(2) RENEWABLE ENERGY.—The term 'renewable energy' means electric energy generated from solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, or municipal solid waste, or from a hydropower project.''.

(c) PRELIMINARY PERMITS.—Section 5 of the Federal Power Act (16 U.S.C. 798) is amended—

(1) in subsection (a), by striking ''three'' and inserting ''4''; and

(2) by amending subsection (b) to read as follows:

''(b) The Commission may—

''(1) extend the period of a preliminary permit once for not more than 4 additional years beyond the 4 years permitted by subsection (a) if the Commission finds that the permittee has carried out activities under such permit in good faith and with reasonable diligence; and

''(2) if the period of a preliminary permit is extended under paragraph (1), extend the period of such preliminary permit once for not more than 4 additional years beyond the extension period granted under paragraph (1), if the Commission determines that there are extraordinary circumstances that warrant such additional extension.''.

(d) TIME LIMIT FOR CONSTRUCTION OF PROJECT WORKS.—Section 13 of the Federal Power Act (16 U.S.C. 806) is amended in the second sentence by striking ''once but not longer than two additional years'' and inserting ''for not more than 8 additional years,''.

(e) CONSIDERATIONS FOR RELICENSING TERMS.—Section 15(e) of the Federal Power Act (16 U.S.C. 808(e)) is amended—

(1) by striking ''(e) Except'' and inserting the following:

''(e) LICENSE TERM ON RELICENSING.—

''(1) IN GENERAL.—Except''; and

(2) by adding at the end the following:

''(2) CONSIDERATION.—In determining the term of a license under paragraph (1), the Commission shall consider project-related investments by the licensee over the term of the existing license (including any terms under annual licenses) that resulted in new development, construction, capacity, efficiency improvements, or environmental measures, but which did not result in the extension of the term of the license by the Commission.''.

SEC. 3. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

(a) HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.—Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

''SEC. 34. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

''(a) DEFINITION.—In this section, the term 'Federal authorization'—

''(1) means any authorization required under Federal law with respect to an application for a license under this part; and

''(2) includes any conditions, prescriptions, permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law to approve or implement the license under this part.

''(b) DESIGNATION AS LEAD AGENCY.—The Commission shall act as the lead agency for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license under this part.

''(c) RULEMAKING TO ESTABLISH PROCESS TO SET SCHEDULE.—

''(1) NEGOTIATED RULEMAKING.—Not later than 90 days after the date of enactment of this section the Commission, the Secretary of Agriculture, the Administrator of the National Oceanic and Atmospheric Administration, and the Secretary of the Interior shall enter into a negotiated rulemaking pursuant to subchapter III of chapter 5 of title 5, United States Code, to develop and publish a rule providing a process for the Commission to evaluate, and issue a final decision on, a completed application for a license under this part.

''(2) NEGOTIATED RULEMAKING COMMITTEE.—The negotiated rulemaking committee established pursuant to the negotiated rulemaking process entered into under paragraph (1) shall include representatives of State and Indian tribal governments, and other stakeholders who will be significantly affected by a rule issued under this subsection.

''(3) DEADLINES.—

''(A) PROPOSED RULE.—Not later than 2 years after the date of enactment of this section, the Commission shall publish a proposed rule resulting from the negotiated rulemaking under this subsection.

''(B) FINAL RULE.—Not later than 3 years after the date of enactment of this section, the Commission shall publish a final rule resulting from the negotiated rulemaking under this subsection.

''(4) ELEMENTS OF RULE.—In publishing a rule under this subsection, the Commission shall ensure that—

''(A) the rule includes a description of the Commission's responsibility as the lead agency in coordinating Federal authorizations;

''(B) the rule includes a process for development of a schedule for the review and disposition of a completed application for a license under this part;

''(C) each schedule developed pursuant to such process shall—

''(i) include deadlines for actions on the applicable completed application—

''(I) that are consistent with the duties of each agency under this Act and under applicable State, tribal, and other Federal laws; and

''(II) by—

''(aa) each Federal agency responsible for a Federal authorization;

''(bb) each State agency, local government, or Indian tribe that may consider an aspect of an application for a Federal authorization or is responsible for conducting any separate permitting and environmental reviews of the applicable project;

''(cc) the applicant;

''(dd) the Commission; and

''(ee) other participants in a license proceeding;

''(ii) facilitate the identification and completion of Federal, State, and tribal agency-requested studies, reviews, and any other procedures required to be conducted prior to, or concurrent with, the preparation of the Commission's environmental review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), to the extent practicable; and

''(iii) provide for a final decision on the applicable completed application to be made by not later than 3 years after the date on which the Commission receives such completed application;

''(D) the rule includes a mechanism for resolving issues of concern that may delay the completion of a license application or review of a completed application;

''(E) the rule includes a definition of a completed application; and

''(F) the rule provides for an opportunity for public notice and comment on—

''(i) a completed application; and

''(ii) the schedule developed for the review and disposition of the application.

''(d) APPLICATION PROCESSING.—The Commission, Federal, State, and local government agencies, and Indian tribes may allow an applicant seeking a Federal authorization to fund a third-party contractor selected by such an agency or tribe to assist in reviewing the application. All costs of an agency or tribe incurred pursuant to direct funding by the applicant, including all costs associated with the third party contractor, shall not be considered costs of the United States for the administration of this part under section 10(e).

''(e) ISSUE RESOLUTION.—The Commission may forward any issue of concern that has delayed either the completion of the application or the issuance of a license for a completed application beyond the deadline set forth in the schedule established under the final rule published under subsection (c) to the heads of the relevant State, Federal, or Indian tribal agencies for resolution. If the Commission forwards an issue of concern to the head of a relevant agency, the Commission and the relevant agency shall enter into a memorandum of understanding to facilitate interagency coordination and resolution of the issue of concern, as appropriate.

''(f) NO EFFECT ON OTHER LAWS.—Nothing in this section—

''(1) expands or limits the application of any power or authority vested in an agency, State, or Indian tribe by any applicable law or regulation;

''(2) shall be construed to affect any requirements of State, tribal, or other Federal law (including under the Federal Water Pollution Control Act, the Fish and Wildlife Coordination Act, the Endangered Species Act of 1973, section 14 of the Act of March 3, 1899 (commonly known as the Rivers and Harbors Appropriation Act of 1899), the Coastal Zone Management Act of 1972, the Magnuson-Stevens Fishery Conservation and Management Act, and those provisions in subtitle III of title 54, United States Code, commonly known as the National Historic Preservation Act) with respect to an application for a license under this part; or

''(3) abrogates, diminishes, or otherwise affects any treaty or other right of any Indian tribe.

''SEC. 35. LICENSING STUDY IMPROVEMENTS.

''(a) IN GENERAL.—To facilitate the timely and efficient completion of the license proceedings under this part, the Commission shall, in consultation with applicable Federal and State agencies and interested members of the public—

''(1) compile current and accepted best practices in performing studies required in such license proceedings, including methodologies and the design of studies to assess the full range of environmental impacts of a project that reflect the most recent peer-reviewed science;

''(2) compile a comprehensive collection of studies and data accessible to the public that could be used to inform license proceedings under this part; and

''(3) encourage license applicants, agencies, and Indian tribes to develop and use, for the purpose of fostering timely and efficient consideration of license applications, a limited number of open-source methodologies and tools applicable across a wide array of projects, including water balance models and streamflow analyses.

''(b) USE OF STUDIES.—To the extent practicable, the Commission and other Federal, State, and local government agencies and Indian tribes considering an aspect of an application for Federal authorization (as defined in section 34) shall use relevant, existing studies and data and avoid duplicating such studies that are applicable to the project. Studies repeated for the purpose of characterizing seasonal or annual variation of a relevant characteristic or resource shall not be considered duplicative.

''SEC. 36. EVALUATION OF EXPEDITED LICENSING FOR QUALIFYING PROJECT UPGRADES.

''(a) DEFINITIONS.—In this section:

''(1) EXPEDITED LICENSE AMENDMENT PROCESS.—The term 'expedited license amendment process' means an expedited process for issuing an amendment to an existing license issued under this part for a project.

''(2) QUALIFYING PROJECT UPGRADE.—The term 'qualifying project upgrade' means a change—

''(A) to a project; and

''(B) that meets the criteria under subsection (b).

''(b) IN GENERAL.—To improve the regulatory process and reduce the time and cost of making upgrades to existing projects, the Commission shall investigate the feasibility of implementing an expedited license amendment process for a change to a project that meets the following criteria:

''(1) The change to the project—

''(A) is limited to the power house equipment of the project; or

''(B) will result in environmental protection, mitigation, or enhancement measures to benefit fish and wildlife resources or other natural or cultural resources.

''(2) The change to the project is unlikely to adversely affect any species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as determined by the Secretary of the Interior.

''(3) The Commission ensures, in accordance with section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536), that the change to the project will not result in the destruction or modification of critical habitat.

''(4) The change to the project is consistent with any applicable comprehensive plan under section 10(a).

''(5) The change to the project is unlikely to adversely affect water quality and water supply, as determined in consultation with any applicable State or Indian tribe.

''(6) Any adverse environmental effects resulting from the change to the project will be insignificant.

''(c) WORKSHOPS AND PILOTS.—The Commission shall—

''(1) not later than 60 days after the date of enactment of this section, hold an initial workshop to solicit public comment and recommendations on how to implement an expedited license amendment process for qualifying project upgrades;

''(2) evaluate pending applications for an amendment to an existing license of a project for a qualifying project upgrade that may benefit from an expedited license amendment process;

''(3) not later than 180 days after the date of enactment of this section, identify and solicit participation by project developers in, and begin implementation of, a 3-year pilot program to evaluate the feasibility and utility of an expedited license amendment process for qualifying project upgrades; and

''(4) not later than 3 months after the end of the 3-year pilot program under paragraph (3), hold a final workshop to solicit public comment on the expedited license amendment process.

''(d) MEMORANDUM OF UNDERSTANDING.—The Commission shall, to the extent practicable, enter into a memorandum of understanding with any applicable Federal, State, or tribal agency to implement the pilot program described in subsection (c).

''(e) REPORTS.—Not later than 3 months after the date of the final workshop held pursuant to subsection (c)(4), the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that includes—

''(1) a summary of the public comments received as part of the initial workshop held under subsection (c)(1);

''(2) a summary of the public comments received as part of the final workshop held under subsection (c)(4);

''(3) a description of the expedited license amendment process for qualifying project upgrades evaluated under the pilot program, including—

''(A) a description of the procedures or requirements that were waived under the expedited license amendment process;

''(B) a comparison between—

''(i) the average amount of time required to complete the licensing process for an amendment to a license under the expedited license amendment process tested under the pilot program; and

''(ii) the average amount of time required to complete the licensing process for a similar amendment to a license under current Commission processes;

''(4) the number of requests received by the Commission to participate in the expedited license amendment process for qualifying project upgrades;

''(5) a description of changes to Commission rules required to create and standardize an expedited license amendment process for qualifying project upgrades;

''(6) a description of factors that prevented any participant in the pilot program from

completing the expedited license amendment process in the expedited time frame.

''(f) IMPLEMENTATION.—If the Commission determines, based upon the workshops and results of the pilot program under subsection (c), that an expedited license amendment process will reduce the time and costs for issuing amendments to licenses for qualifying project upgrades, the Commission shall revise its policies and regulations, in accordance with applicable law, to establish an expedited license amendment process.

''(g) PUBLIC INPUT.—In carrying out subsection (f), the Commission shall solicit and consider public comments before finalizing any change to policies or regulations.''.

SEC. 4. PILOT PROGRAM FOR CONSOLIDATED LICENSING PROCESS FOR INTRA-WATERSHED PROJECTS.

(a) DEFINITIONS.—In this section:

(1) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(2) PROJECT.—The term ''project'' has the meaning given such term in section 3 of the Federal Power Act (16 U.S.C. 796).

(b) INITIAL WORKSHOP.—Not later than 3 months after the date of enactment of this Act, the Commission shall hold a workshop to solicit public comment and recommendations on how to implement a pilot program described in subsection (c).

(c) ESTABLISHMENT OF PILOT PROGRAM.—The Commission shall establish a voluntary pilot program to enable the Commission to consider multiple projects together in a consolidated licensing process in order to issue a license under part I of the Federal Power Act (16 U.S.C. 792 et seq.) for each such project.

(d) CANDIDATE PROJECT IDENTIFICATION.—Not later than 1 year after the date of enactment of this Act, the Commission, in consultation with the head of any applicable Federal or State agency or Indian tribe and licensees, shall identify and solicit candidate projects to participate in the pilot program established under subsection (c). In order to participate in such pilot program a project shall meet the following criteria:

(1) The current license for the project expires between 2019 and 2029 or the project is not licensed under part I of the Federal Power Act (16 U.S.C. 792 et seq.).

(2) The project is located within the same watershed as other projects that are eligible to participate in the pilot program.

(3) The project is located in sufficiently close proximity and has environmental conditions that are sufficiently similar to other projects that are eligible to participate in the pilot program so that watershed-wide studies and information may be developed, thereby significantly reducing the need for, and scope of, individual project-level studies and information.

(e) DESIGNATION OF INDIVIDUAL PROJECTS AS A SINGLE GROUP.—The Commission may designate a group of projects to be considered together in a consolidated licensing process under the pilot program established under subsection (c). The Commission may designate such a group only if each licensee (or applicant) for a project in the group, on a voluntary basis and in writing, agrees—

(1) to participate in the pilot program; and

(2) to a cost-sharing arrangement with other licensees (or applicants) and applicable Federal and State agencies with respect to the conduct of watershed-wide studies to be considered in support of the license applications for the group of projects.

(f) PROJECT LICENSE TERMS.—The Commission may change the term of any existing license for an individual licensee in a group designated under subsection (e) by up to 5 years—

(1) to provide sufficient time to develop a consolidated study plan for—

(A) studies for individual projects in the group, as necessary; and

(B) relevant watershed-wide studies for purposes of the consolidated licensing process under the pilot program established under subsection (c) that will be applicable to each project in the group; and

(2) to align the terms of the existing licenses such that they expire on the same date.

(g) MEMORANDUM OF UNDERSTANDING.—The Commission shall, to the extent practicable, enter into a memorandum of understanding with any applicable Federal or State agency or Indian tribe to implement the pilot program established under subsection (c).

(h) INITIAL REPORT.—Not later than 3 months after the date of the initial workshop held pursuant to subsection (b), the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that includes—

(1) a summary of the public comments received as part of such initial workshop; and

(2) a preliminary plan for identifying and soliciting participants in the pilot program established under subsection (c).

(i) INTERIM REPORT.—Not later than 4 years after the establishment of the pilot program under subsection (c), the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that includes—

(1) a description of the status of the pilot program, including a description of the individual projects that are participating in the pilot program and the watersheds in which such projects are located; or

(2) if no projects are participating in the pilot program, a summary of any barriers the Commission has identified to proceeding with the pilot program and the reasons provided by potential participants for their preference for using an individual license process.

SEC. 5. INTERAGENCY COMMUNICATIONS AND COOPERATION.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is further amended by adding at the end the following new section:

''SEC. 37. INTERAGENCY COMMUNICATIONS AND COOPERATION.

''(a) EX PARTE COMMUNICATIONS.—Interagency communications relating to the preparation of environmental documents under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license under this part, or to the licensing process for a license under this part, shall not be considered to be ex parte communications under Commission rules.

''(b) PARTICIPATION IN PROCEEDINGS.—Interagency cooperation, at any time, in the preparation of environmental documents under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license under this part, or in the licensing process for a license under this part, shall not preclude an agency from participating in a licensing proceeding under this part.

''(c) SEPARATION OF STAFF.—Notwithstanding subsection (a), to the extent the Commission determines necessary, the Commission may require Federal and State agencies participating as cooperating agencies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to demonstrate a separation of staff that are cooperating with the Commission with respect to a proceeding under this part from staff that may participate in an intervention in the applicable proceeding.''.

SEC. 6. HYDROELECTRIC PRODUCTION INCENTIVES AND EFFICIENCY IMPROVEMENTS.

(a) HYDROELECTRIC PRODUCTION INCENTIVES.—Section 242 of the Energy Policy Act of 2005 (42 U.S.C. 15881) is amended—

(1) in subsection (c), by striking ''10'' and inserting ''20'';

(2) in subsection (f), by striking ''20'' and inserting ''30''; and

(3) in subsection (g), by striking ''each of the fiscal years 2006 through 2015'' and inserting ''each of fiscal years 2017 through 2026''.

(b) HYDROELECTRIC EFFICIENCY IMPROVEMENT.—Section 243(c) of the Energy Policy Act of 2005 (42 U.S.C. 15882(c)) is amended by striking ''each of the fiscal years 2006 through 2015'' and inserting ''each of fiscal years 2017 through 2026''.''.

SEC. 7. TECHNICAL AMENDMENTS.

(a) ALTERNATIVE CONDITIONS.—Section 33(a)(2)(B) of the Federal Power Act (16 U.S.C. 823d(a)(2)(B)) is amended, in the matter preceding clause (i), by inserting ''deemed necessary'' before ''by the Secretary''.

(b) LICENSES.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by striking ''adequate protection and utilization of such reservation'' and all that follows through ''That no license affecting the navigable capacity'' and inserting ''adequate protection and utilization of such reservation. The license applicant and any party to the proceeding shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of no more than 90 days, on any disputed issues of material fact with respect to such conditions. All disputed issues of material fact raised by any party shall be determined in a single trial-type hearing to be conducted by the relevant resource agency in accordance with the regulations promulgated under this subsection and within the time frame established by the Commission for each license proceeding. Within 90 days of the date of enactment of the Energy Policy Act of 2005, the Secretaries of the Interior, Commerce, and Agriculture shall establish jointly, by rule, the procedures for such expedited trial-type hearing, including the opportunity to undertake discovery and cross-examine witnesses, in consultation with the Federal Energy Regulatory Commission: *Provided further*, That no license affecting the navigable capacity''.

SEC. 8. IMPROVING CONSULTATION WITH INDIAN TRIBES.

(a) GUIDANCE DOCUMENT.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretary of the Interior shall prepare, in consultation with interested Indian tribes, licensees under part I of the Federal Power Act, and the public, a guidance document that identifies best practices for the Commission, Federal and State resource agencies, Indian tribes, and applicants for licenses under part I of the Federal Power Act for effective engagement of Indian tribes in the consideration of applications for licenses under part I of the Federal Power Act that may affect an Indian reservation, a treaty, or other right of an Indian tribe.

(2) UPDATES.—The Commission and Secretary shall update the guidance document prepared under paragraph (1) every 10 years.

(3) PUBLIC PARTICIPATION.—In preparing or updating the guidance document, the Commission and the Secretary shall convene public meetings at different locations in the United States, and shall provide an opportunity for written public comments.

(b) PUBLIC WORKSHOPS.—

(1) IN GENERAL.—Not later than one year after preparing or updating the guidance

document under subsection (a), the Commission shall convene public workshops, held at different locations in the United States, to inform and educate Commission staff, Federal and State resource agencies, Indian tribes, applicants for licenses under part I of the Federal Power Act, and interested members of the public, on the best practices identified in the guidance document.

(2) CONSULTATION.—In preparing the agenda for such workshops, the Commission shall consult with the Secretary of the Interior, interested Indian tribes, and licensees under part I of the Federal Power Act.

SEC. 9. TRIBAL MANDATORY CONDITIONS.

(a) IN GENERAL.—Section 4 of the Federal Power Act (16 U.S.C. 797) is amended—

(1) in subsection (e), in the first proviso, by inserting '', or, in the case of tribal land, subject to subsection (h), the Indian tribe having jurisdiction over the tribal land,'' after ''under whose supervision such reservation falls''; and

(2) by adding at the end the following:

''(h) TRIBAL MANDATORY CONDITIONS.—

''(1) CRITERIA.—An Indian tribe may deem conditions necessary under the first proviso of subsection (e) only if the Secretary of the Interior (referred to in this subsection as the 'Secretary') determines that the Indian tribe has—

''(A) confirmed the intent of the Indian tribe to deem conditions necessary under the first proviso of subsection (e) by resolution or other official action by the governing body of the Indian tribe;

''(B) demonstrated financial stability and financial management capability over the 3-fiscal-year period preceding the date of the determination of the Secretary under this paragraph; and

''(C) demonstrated the ability to plan, conduct, and administer all services, functions, and activities that would otherwise be administered by the Secretary with respect to deeming conditions necessary on tribal land under the first proviso of subsection (e).

''(2) DETERMINATION ON REQUEST.—On request of an Indian tribe, not later than 1 year after the date on which the Secretary receives the request, the Secretary shall make the determination under paragraph (1).

''(3) WITHDRAWAL OF DETERMINATION.—

''(A) IN GENERAL.—Subject to subparagraph (B), if the Secretary determines that an Indian tribe no longer meets the criteria under paragraph (1), the Secretary may withdraw the determination under paragraph (2).

''(B) NOTICE AND OPPORTUNITY TO RESPOND.—Before withdrawing a determination under subparagraph (A), the Secretary shall provide to the Indian tribe—

''(i) notice of the proposed withdrawal; and

''(ii) an opportunity to respond and, if necessary, redress the deficiencies identified by the Secretary.''.

(b) ALTERNATIVE CONDITIONS.—Section 33(a) of the Federal Power Act (16 U.S.C. 823d(a)) is amended—

(1) in paragraph (1), by inserting ''or an Indian tribe'' before ''deems a condition'';

(2) in paragraph (2), by inserting ''or Indian tribe'' after ''the Secretary'' each place it appears;

(3) in paragraph (3), by inserting ''or Indian tribe'' after ''the Secretary'' each place it appears;

(4) in paragraph (4)—

(A) by inserting ''or Indian tribe'' before ''concerned shall submit'';

(B) by inserting ''or Indian tribe'' before ''gave equal consideration'';

(C) by inserting ''or Indian tribe'' after ''may be available to the Secretary'';

(D) by inserting ''or Indian tribe'' before ''shall also submit,''; and

(E) by striking ''available to the Secretary and relevant to the Secretary's decision'' and inserting ''available to the Secretary or Indian tribe and relevant to the decision of the Secretary or Indian tribe''; and

(5) in paragraph (5)—

(A) by striking ''Secretary's final condition'' and inserting ''final condition of the Secretary or Indian tribe'';

(B) by inserting ''or Indian tribe'' after ''consult with the Secretary'';

(C) by inserting ''or Indian tribe'' before ''may accept the Dispute Resolution'';

(D) by inserting ''or Indian tribe'' after ''advisory unless the Secretary'';

(E) by inserting ''or Indian tribe'' before ''shall submit the advisory and''; and

(F) by striking ''Secretary's final written determination'' and inserting ''final written determination of the Secretary or Indian tribe''.

SEC. 10. CONSIDERATION OF INVASIVE SPECIES.

Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by inserting after ''the Secretary of Commerce.'' the following: ''In prescribing a fishway, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall consider the threat of invasive species.''.

The Acting CHAIR. Pursuant to House Resolution 607, the gentleman from Illinois (Mr. RUSH) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Illinois.

Mr. RUSH. Mr. Chairman, I include in the RECORD letters of opposition to H.R. 3043.

KALISPEL TRIBE OF INDIANS,
Usk, WA, November 8, 2017.

Re Opposition to H.R. 3043, the Hydropower Policy Modernization Acts.

Hon. GREG WALDEN,
Chairman, House Energy and Commerce Committee, Washington, DC.

Hon. FRANK PALLONE,
Ranking Member, House Energy and Commerce Committee, Washington, DC.

DEAR CHAIRMAN WALDEN AND RANKING MEMBER PALLONE: On behalf of the Kalispel Tribe of Indians, we write to once again voice our opposition to H.R. 3043, the Hydropower Policy Modernization Act. As stated by Kalispel Vice Chairman Raymond Pierre during testimony before the House Natural Resources Committee in April, H.R. 3043 goes much too far in trying to address inefficiencies in the federal hydropower licensing process and will create more problems than it resolves. If enacted, H.R. 3043 will allow hydropower operations to undermine the purposes of Indian reservations and destroy with impunity tribal trust resources. We respectfully call on you to oppose this legislation.

The Kalispel Tribe resides on a 5,000-acre reservation on the Pend Oreille River in northeast Washington. Our reservation was created to provide our people with a permanent home, including the ability to use our river and its resources like we have since time immemorial. This purpose has been undermined by the construction and operation of the Albeni Falls, Box Canyon, and Boundary hydropower projects on the Pend Oreille River. The Box Canyon Reservoir flooded ten percent of our reservation. In addition, these facilities have combined to transform our free-flowing river into a fragmented system of reservoirs in which native fish struggle to survive while invasive species thrive. Many Kalispel no longer trust or use the river because of its altered ecology.

One of the Tribe's highest priorities is limiting any additional loss of reservation lands and remedying the cultural disconnection to the Pend Oreille River. The Federal Power Act (''FPA'') offers the Tribe its most potent tool in achieving these objectives. No other federal statute affords the same degree of protection to the tribal nations whose reservations are occupied by a Federal Energy Regulatory Commission (''FERC'')-licensed hydroelectric project.

Section 4 (e) of the FPA authorizes the Secretary of the Interior to develop mandatory conditions for the approval of FERC licenses that impact Indian reservations. In our case, these conditions are the only way to mitigate longstanding and otherwise unaddressed environmental and cultural impacts caused by FERC-licensed projects. The Pend Oreille Basin will be the recipient of significant conservation investments to restore connectivity and other habitat characteristics that make those projects consistent with the purposes of the Kalispel Indian Reservation because of the 4(e) conditions and Section 18 fishway prescriptions in the Box Canyon and Boundary FERC licenses. This conditioning authority also makes it much more difficult for hydroelectric projects to further flood Indian lands, which is a recurring problem across the United States.

H.R. 3043 does not improve the federal hydropower licensing process, but instead weakens its protections for impacted tribal nations. H.R. 3043 detrimentally impacts the Section 4(e) conditioning regime and undermines its effectiveness in protecting Indian Country. H.R. 3043 would overturn the D.C. Circuit Court of Appeals decisions in Tacoma v. FERC, which held that the Department of the Interior has mandatory authority to develop appropriate conditions to protect Indian reservations under the FPA and that FERC has no authority to reject these conditions because Interior did not meet FERC's truncated schedule. H.R. 3043 would force the Department of the Interior to comply with FERC's schedule. This change will impair the Department of the Interior's ability to fully examine each project and if it misses a deadline, tribal interests will not be considered until the next relicensing, often fifty years later.

H.R. 3043 would empower FERC to determine the scope of the environmental review for 4(e) conditions. This change creates a new burden for FERC in an area in which it lacks expertise. It also would require the Department of the Interior to consider the balance of energy production against its trust responsibility to Indian lands. Interior's only interest in the current process is the protection of Indian lands and that should remain its focus—it is not an arm of FERC.

Finally, H.R. 3043 would overturn the Supreme Court's decision in Escondido v. FERC, 466 U.S. 765 (1984) by giving FERC the authority to make a determination that a 4(e) condition or fishway prescription is inconsistent with the FPA. This fundamentally changes the FPA and undermines the Department of the Interior's ability to protect Indian lands and tribal resources.

The Kalispel Tribe urges the House of Representatives to reject H.R. 3043. The bill elevates hydropower interests at the expense of tribal rights. If this bill is enacted the Kalispel Tribe will suffer so that hydropower licensing may proceed without protecting tribal lands and trust resources.

Sincerely,

GLEN NENEMA,
Chairman, Kalispel Tribe of Indians.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, April 27, 2017.

Hon. GREG WALDEN,
Chairman, Committee on Energy and Commerce, Washington, DC.
Hon. FRED UPTON,
Chairman, Subcommittee on Energy, Washington, DC.

DEAR CHAIRMAN WALDEN AND CHAIRMAN UPTON: As Members of the Subcommittee on Energy with strong interest in facilitating improvements in hydropower operations, development, and licensing, we write to urge you to schedule another hearing on this critical topic. We believe a hearing with representatives of states, resource agencies, and Native American Tribes is vital to having a full understanding of how the 2005 hydropower license process reforms are working and what changes may be necessary to further improve the licensing and relicensing process to reduce delays and costs for all parties involved.

Hydroelectric power provides substantial, virtually carbon-free, baseload energy at low cost to our manufacturing sector and to residential and commercial consumers. It is an important asset that we believe is essential to maintain.

At the same time, however, it is clear that while hydroelectric generation is essentially free of air emissions relative to fossil generation, it is not impact-free. Absent mitigation, hydropower has major negative impacts on fish and wildlife populations, water quality and other important physical and cultural resources, particularly if it is poorly operated or sited. In addition, increased demands for water creates significant challenges of water supply management in some regions. All of these competing interests must be balanced in issuing a license. The Federal Power Act (FPA) respects states' authorities to manage water resources according to state laws allocating water rights. And, the FPA authorizes states and federal natural resource agencies to place conditions on hydroelectric licenses to preserve water quality, protect public lands and Native American reservations, and ensure proper fish passage to preserve healthy ecosystems and fisheries.

We were very encouraged by the substance and tone of the Subcommittee's March 15, 2017 hearing entitled ''Modernizing Energy Infrastructure: Challenges and Opportunities to Expanding Hydropower Generation.'' The comments and contributions from witnesses and Members on both sides of the aisle were constructive, measured, and thoughtful, leading us to believe that great potential exists to develop legislation to improve the process for licensing hydroelectric generation and pumped storage in this country.

However, the hearing provided an incomplete record with regard to the process of hydroelectric licensing. In order to move forward on considering any legislative changes to current law in a knowledgeable manner, the Committee must hear from those who propose the conditions included in licenses: states, federal resource agencies, and Native American Tribes. Each of these entities has a unique role in the licensing process stemming from its equally unique responsibility for overseeing water rights and managing the many demands on a river and its use. Neither power generation, nor any other single use of a river, should dominate the decision making process.

We look forward to working with you on this matter and respectfully urge you to hold a second hearing with these witnesses prior to consideration of any legislative proposal. Thank you for your attention and consideration.

Sincerely,

Frank Pallone, Jr., Ranking Member, Committee on Energy and Commerce; Bobby L. Rush, Ranking Member, Subcommittee on Energy; Jerry McNerney, Member of Congress; Scott Peters, Member of Congress; Gene Green, Member of Congress; Michael F. Doyle, Member of Congress; Kathy Castor, Member of Congress; John P. Sarbanes, Member of Congress; Peter Welch, Member of Congress; Paul Tonko, Ranking Member, Subcommittee on Environment; Dave Loebsack, Member of Congress; Joseph P. Kennedy III, Member of Congress; G.K. Butterfield, Member of Congress.

OCTOBER 5, 2017.

Hon. PAUL RYAN,
Speaker, House of Representatives, Washington, DC.
Hon. NANCY PELOSI,
Minority Leader, House of Representatives, Washington, DC.

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.

MARYLAND DEPARTMENT OF
THE ENVIRONMENT,
Baltimore, MD, August 14, 2017.

Hon. PAUL RYAN,
Speaker, House of Representatives, Washington, DC.
Hon. NANCY PELOSI,
Minority Leader, House of Representatives, Washington, DC.

DEAR SPEAKER RYAN AND MINORITY LEADER PELOSI: The State of Maryland (''Maryland'') provides the following comments on the House of Representatives Bill 3043 (H.R. 3043)—Hydropower Policy Modernization Act of 2017. Although Maryland generally welcomes reforms that streamline the Federal Energy Regulatory Commission (FERC) licensing process, Maryland strenuously opposes any provisions in H.R. 3043 that would have the effect of curtailing State authority under Section 401 of the Clean Water Act to establish license conditions to protect water quality. Several provisions of H.R. 3043 essentially serve to constrain state agencies use of their independent authorities, making it more difficult to protect water quality.

States serve an essential role in the FERC hydropower licensing process when they review applications under Section 401 of the Clean Water Act in order to determine whether the construction and/or operation of the facility will meet state water quality standards and requirements. These reviews often result in applicants conducting additional scientific studies and states putting in place requirements (conditions) to ensure that State water quality standards and requirement are met. These types of conditions are essential for ensuring that existing and new hydropower projects are built and operated in a manner that is consistent with state and federal environmental laws and are protective of the environment. These conditions then become conditions of the FERC license.

H.R. 3043 designates FERC as the lead agency over federal authorizations related to an application for a license, license amendment, or exemption for a hydropower project. This bill requires states to meet deadlines established by FERC in a schedule that FERC develops for the licensing action. Further, this bill places limits on FERC's ability to easily grant extensions to the deadlines. As the lead agency, FERC would establish and control the timeline for the hydropower licensing process and it appears that H.R. 3043 gives FERC the authority to create a schedule that would reduce the amount of time a state would have to get necessary scientific studies completed and to assess whether water quality standards and requirements will be met as required under Section 401 of the Clean Water Act. Further, not only does this legislation likely place pressure on states to complete their water quality reviews more quickly using existing information, it also provides applicants with an entitlement to a trial-type hearing before a FERC Administrative Law Judge whenever there is a dispute of material fact. Moreover, this legislation declares the decision of the FERC Administrative Law Judge to be final and not subject to further administrative review. This allowance for a trial-like hearing

combined with pressure to use existing science and meet strict deadlines together makes it even more challenging for states to protect water quality.

Finally, applications for amendments to existing licenses which qualify as a project ''upgrade'' (which is determined by FERC as to whether a proposed amendment qualifies as an upgrade) obtain even more expedited processing by FERC. In these cases, it appears that FERC would be the decision maker, not the state, with regard to whether the desired amendment to project operations would affect water quality.

Decades of federal court decisions interpreting Section 401 have established the states' authority to require conditions in FERC licenses necessary to protect water quality. These decisions recognize and affirm the basic principle of federalism embodied in the Clean Water Act that states have the primary role and responsibility to ensure state water quality standards are met.

Maryland's interest in protecting water quality is as important and relevant today as ever, particularly now as FERC considers the relicensing of the Conowingo hydroelectric dam on the Susquehanna River in Maryland. The Susquehanna River provides approximately 50 percent of the fresh water to the Chesapeake Bay and is an important driver of the Bay's water quality. A joint study funded by Maryland and the Army Corps of Engineers concluded that the Dam's loss of capacity to trap sediment and associated nitrogen and phosphorus pollution (nutrients) adversely affects the health of the Bay. The precise nature of the Dam's adverse impacts on the health of the Bay and the circumstances under which they occur are currently the subject of additional study. What is clear, however, is that any new FERC license for the Dam will have to contain appropriate conditions to address sediment and associated nutrient transport and ensure that Maryland's water quality standards are maintained. Without appropriate conditions Maryland may not be able to meet its commitment to achieve EPA's Total Maximum Daily Loads (''TMDL'') for the Bay.

In impairing the states' primary roles and responsibilities under Section 401 to fashion conditions in FERC licenses, H.R. 3043 relegates the states—the entities with the greatest interest and expertise in protecting state water quality—to bystander or second-class status. Maryland strenuously objects to the provisions in H.R. 3043 that would make it more difficult for Maryland to ensure water quality through the Clean Water Act Section 401 water quality certification process.

Maryland's concerns with the legislation's impact on the Conowingo hydroelectric dam relicensing process could be addressed by making clear that nothing in the legislation alters Section 401 of the Clean Water Act with regard to State authority, role, responsibilities, process and timeline. Further, the legislation should clearly indicate that state actions associated with Section 401 requirements, including the assessment of water quality standard achievement and resulting conditions, are not eligible for a trial type hearing by a FERC Administrative Law Judge for purposes of resolving disputes of material fact. Maryland urges that the provisions of H.R. 3043 that would have the effect of curtailing State authority under Section 401 of the Clean Water Act be stricken from the bill.

We thank you for your time and attention to this matter.

Respectfully,

BEN GRUMBLES,
Secretary, Maryland Department of the Environment.

MARK BELTON,
Secretary, Maryland Department of Natural Resources.

Mr. RUSH. Mr. Chairman, I rise in strong support of the Rush amendment in the nature of a substitute, and I urge all of my colleagues to support it as well.

Mr. Chairman, hydropower is backed by Members on both sides of the aisle. We all support hydropower, but the process for how we license these projects is far too important for us to get it wrong.

While many Members on the minority side have objections to the underlying bill, H.R. 3043, due to its negative impact on States' rights and States' prerogatives under the Clean Water Act, my substitute amendment addresses these issues in a more responsible way.

Mr. Chairman, H.R. 3043 will not modernize or improve the hydropower licensing process, but, rather, it simply places private profits for industry over the public interest.

Mr. Chairman, we certainly need a more balanced approach, such as the one provided in my substitute amendment, which contains bipartisan provisions that were included in the hydropower package that both sides agreed to in a fit of bipartisanship last December in committee.

Mr. Chairman, my amendment contains several provisions to improve the licensing process while also offering incentives to the hydropower industry.

This substitute contains a requirement to set up a new licensing process, but, unlike H.R. 3043, it protects the rights of Federal resource agencies, States, and Indian Tribes to impose conditions in accordance with modern environmental laws.

My substitute also amends the definition of renewable energy to include all hydropower, just as H.R. 3043 does; however, it expands the goals for Federal purchasing of renewable power beyond the 15 percent included in H.R. 3043 as an objective, not a mandate.

Mr. Chairman, my amendment also contains a ''reward for early action'' provision that authorizes FERC to take into account a licensee's investments made over the course of their license in order to improve the efficiency or environmental performance of their hydropower facility when setting the term of their new license.

Mr. Chairman, in testimony before the Energy and Commerce Committee, we heard, repeatedly, that a major cause for licensing delays was due to incomplete applications that do not include all the pertinent information necessary to issue a decision.

While H.R. 3043 does nothing to address this issue, my substitute does so by directing FERC and other Federal resource agencies to convene a negotiating rulemaking with all the stakeholders to develop a process in which a completed license application will be evaluated and issued or denied within a period of not more than 3 years.

□ 1515

Mr. Chairman, my amendment preserves States' and Tribal authorities by directing FERC and the Secretary of the Interior to issue guidance on best practices for engagement with Indian Tribes in the hydropower licensing process.

Mr. Chairman, we cannot allow industry profits to supersede the interests of Native Tribes, States, and other important stakeholders.

Mr. Chair, I yield back the balance of my time.

Mr. UPTON. Mr. Chair, I claim the time in opposition to the amendment.

The Acting CHAIR. The gentleman from Michigan is recognized for 5 minutes.

Mr. UPTON. Mr. Chairman, I rise in opposition to the amendment. I do so with some hesitancy against my good friend, but I would say that this amendment would strike and replace the base tax with language that would add additional layers of red tape and bureaucracy already to the permitting process.

The bill itself, H.R. 3043, contains essential permitting and licensing reforms to ensure that renewable hydropower remains an important part of our all-of-the-above approach to energy, something that many of us on both sides of the aisle support.

We know that the permitting process has been broken. We have heard from FERC over the years and project developers who have been stuck for more than a decade because of bureaucratic delays.

We also know that we need to improve coordination. There are lots of moving parts with multiple permits required and sometimes dozens of agencies that are involved, but this bill, H.R. 3043, brings transparency and predictability to the process by empowering the State and Federal agencies to actually sit at the table with FERC to identify issues of concern and resolve them before they result in unnecessary delay.

The bill, H.R. 3043, as we have said a number of times over the last hour, ensures that States and Tribes are an integral part of that process. The word ''consult'' appears no less than a dozen times in the 30 pages.

Without these important changes to the law, States and Tribes may continue to be left out of the important decisions relating to hydropower licensing.

Again, I remind my colleagues that this is a new provision that we added. This wasn't in the bill last year as we debated this title and approved it in committee and saw it move again on the Senate floor with a vote that, as I recall, was 92–8.

The bill, H.R. 3043, strikes a careful balance, which is why it has broad support from the American Council on Renewable Energy, the American Public Power Association, the Business Council for Sustainable Energy, Edison Electric Institute, International Brotherhood of Boilermakers, International

Brotherhood of Electrical Workers, International Federation of Professional and Technical Engineers, Large Public Power Council, Laborers' International Union of North America, National Electrical Contractors Association, the National Hydropower Association, the National Rural Electric Cooperative Association, the North American Building Trades Council, and the United Brotherhood of Carpenters and Joiners of America.

Mr. Chairman, this amendment, we view over here on this side as a poison pill. It would kill jobs and discourage the development of clean, affordable, and reliable hydropower.

Mr. Chair, I would urge my colleagues to vote ''no'' on this amendment and vote ''yes'' on the bill.

Mr. Chair, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Illinois (Mr. RUSH).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. RUSH. Mr. Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Illinois will be postponed.

Mr. UPTON. Mr. Chair, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. DESANTIS) having assumed the chair, Mr. ESTES of Kansas, Acting Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 3043) to modernize hydropower policy, and for other purposes, had come to no resolution thereon.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 3 o'clock and 20 minutes p.m.), the House stood in recess.

□ 1630

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HULTGREN) at 4 o'clock and 30 minutes p.m.

HOUR OF MEETING ON TOMORROW

Mr. HILL. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 9 a.m. tomorrow.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

HYDROPOWER POLICY MODERNIZATION ACT OF 2017

The SPEAKER pro tempore. Pursuant to House Resolution 607 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the further consideration of the bill, H.R. 3043.

Will the gentleman from Illinois (Mr. RODNEY DAVIS) kindly take the chair.

□ 1632

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H.R. 3043) to modernize hydropower policy, and for other purposes, with Mr. RODNEY DAVIS of Illinois (Acting Chair) in the chair.

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose earlier today, a request for a recorded vote on amendment No. 4 printed in House Report 115–391, offered by the gentleman from Illinois (Mr. RUSH), had been postponed.

AMENDMENT NO. 4 OFFERED BY MR. RUSH

The Acting CHAIR. Pursuant to clause 6 of rule I, the unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Illinois (Mr. RUSH) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 185, noes 234, not voting 13, as follows:

[Roll No. 619]

AYES—185

Adams
Aguilar
Barragán
Bass
Beatty
Bera
Beyer
Bishop (GA)
Blumenauer
Blunt Rochester
Bonamici
Boyle, Brendan F.
Brady (PA)
Brown (MD)
Brownley (CA)
Bustos
Butterfield
Capuano
Carbajal
Cárdenas
Carson (IN)
Cartwright
Castor (FL)
Castro (TX)
Chu, Judy
Cicilline
Clarke (NY)
Clay
Cleaver
Clyburn
Cohen
Cole
Connolly
Conyers
Cooper
Correa
Courtney
Crist
Crowley
Cummings
Davis (CA)
Davis, Danny
DeFazio
DeGette
Delaney
DeLauro
DelBene
Demings
DeSaulnier
Deutch
Dingell
Doggett
Doyle, Michael F.
Ellison
Engel
Eshoo
Espaillat
Esty (CT)
Evans
Foster
Frankel (FL)
Fudge
Gabbard
Gallego
Garamendi
Gomez
Gonzalez (TX)
Gottheimer
Green, Al
Green, Gene
Grijalva
Gutiérrez
Hanabusa
Hastings
Heck
Higgins (NY)
Himes
Hoyer
Huffman
Jackson Lee
Jayapal
Jeffries
Johnson (GA)
Jones
Kaptur
Keating
Kelly (IL)
Kennedy
Khanna
Kihuen
Kildee
Kilmer
Kind
Krishnamoorthi
Kuster (NH)
Langevin
Larsen (WA)
Larson (CT)
Lawrence
Lee
Levin
Lewis (GA)
Lieu, Ted
Lipinski
Loebsack
Lofgren
Lowenthal
Lowey
Lujan Grisham, M.
Luján, Ben Ray
Lynch
Maloney, Carolyn B.
Maloney, Sean
Matsui
McCollum
McEachin
McGovern
Meeks
Meng
Moore
Moulton
Mullin
Murphy (FL)
Nadler
Napolitano
Neal
Nolan
Norcross
O'Halleran
O'Rourke
Pallone
Panetta
Pascrell
Payne
Perlmutter
Pingree
Polis
Price (NC)
Quigley
Raskin
Rice (NY)
Richmond
Rosen
Ruiz
Ruppersberger
Rush
Ryan (OH)
Sánchez
Sarbanes
Schakowsky
Schiff
Schneider
Scott (VA)
Serrano
Sewell (AL)
Shea-Porter
Sherman
Sinema
Sires
Slaughter
Smith (WA)
Soto
Speier
Suozzi
Swalwell (CA)
Takano
Thompson (CA)
Thompson (MS)
Titus
Tonko
Torres
Tsongas
Vargas
Veasey
Vela
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters, Maxine
Watson Coleman
Welch
Wilson (FL)
Yarmuth
Young (AK)

NOES—234

Abraham
Aderholt
Allen
Amash
Amodei
Arrington
Babin
Bacon
Banks (IN)
Barletta
Barr
Barton
Bergman
Biggs
Bilirakis
Bishop (MI)
Bishop (UT)
Black
Blackburn
Blum
Bost
Brady (TX)
Brat
Brooks (AL)
Brooks (IN)
Buchanan
Buck
Bucshon
Budd
Burgess
Byrne
Calvert
Carter (GA)
Carter (TX)
Chabot
Cheney
Coffman
Collins (GA)
Collins (NY)
Comer
Comstock
Conaway
Cook
Costa
Costello (PA)
Cramer
Crawford
Culberson
Curbelo (FL)
Davidson
Davis, Rodney
Denham
Dent
DeSantis
DesJarlais
Diaz-Balart
Donovan
Duffy
Duncan (SC)
Duncan (TN)
Dunn
Emmer
Estes (KS)
Farenthold
Faso
Ferguson
Fitzpatrick
Fleischmann
Flores
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gaetz
Gallagher
Garrett
Gianforte
Gibbs
Gohmert
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)
Graves (LA)
Graves (MO)
Griffith
Grothman
Guthrie
Handel
Harper
Harris
Hartzler
Hensarling
Herrera Beutler
Hice, Jody B.
Higgins (LA)
Hill
Holding
Hollingsworth
Hudson
Huizenga
Hultgren
Hunter
Issa
Jenkins (KS)
Jenkins (WV)
Johnson (LA)
Johnson (OH)
Jordan
Joyce (OH)
Katko
Kelly (MS)
Kelly (PA)
King (IA)
King (NY)
Kinzinger
Knight
Kustoff (TN)
Labrador
LaHood
LaMalfa
Lamborn
Lance
Latta
Lewis (MN)
LoBiondo
Long
Loudermilk
Love
Lucas
Luetkemeyer
MacArthur
Marchant
Marino
Marshall
Massie
Mast
McCarthy
McCaul
McClintock
McHenry
McKinley
McMorris Rodgers
McNerney
McSally
Meadows
Meehan
Messer
Moolenaar
Mooney (WV)
Newhouse
Noem
Norman
Nunes
Olson
Palazzo
Palmer
Paulsen
Pearce
Perry
Peters
Peterson
Pittenger
Poe (TX)
Poliquin
Posey
Ratcliffe
Reed
Reichert
Renacci
Rice (SC)
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rokita
Rooney, Francis
Rooney, Thomas J.
Ros-Lehtinen
Roskam
Ross
Rothfus
Rouzer
Royce (CA)
Russell
Rutherford
Sanford
Schrader
Schweikert
Scott, Austin
Sensenbrenner