



Hydropower Report

JULY 22, 2020

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IN THIS ISSUE

Dear Friends and Colleagues:

Our lead article this month concerns the Council on Environmental Quality's (CEQ) long-awaited final rule on the National Environmental Policy Act (NEPA). The rule introduces sweeping changes to the NEPA regulations, aimed at speeding up infrastructure projects by reducing delays and paperwork during NEPA reviews.

In addition, this issue of the Hydropower Report covers significant developments from FERC, including its treatment of the recent dam failures in central Michigan, which we covered in the last issue of the Hydropower Report. Significantly, FERC has now issued a Notice of Proposed Rulemaking to overhaul its Part 12 dam safety regulations. Hydropower licensees and interested members of the public will have a 60-day period to submit comments on this proposed rule.

This issue also addresses the continued pattern of FERC finding waiver of state water quality certification for several pending relicensing proceedings in California; an order that substitutes a license for an exemption from licensing for a project in Colorado; and a final order revising regulations implementing the Public Utility Regulatory Policies Act of 1978. It also discusses the Supreme Court's historic decision in *McGirt v. Oklahoma*, in which the Court determined that much of eastern Oklahoma is part of a Native American reservation.

Finally, this is our inaugural issue of the Hydropower Report as "Troutman Pepper Hamilton Sanders." We are thrilled to join forces with the talented attorneys of the legacy Pepper Hamilton firm and look forward to partnering with them. To celebrate the merger of our firms, our featured attorney this month is Todd Fracassi who is based in Troutman Pepper's Detroit office. Todd's practice focuses on environmental litigation, regulatory affairs, and corporate environmental counseling.



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We hope that you are continuing to be safe and healthy,

— [Chuck Sensiba](#), Partner

FEATURED ARTICLES

[CEQ Final Rule Overhauls NEPA Regulations](#)

On July 16, 2020, the Council on Environmental Quality (CEQ) published its long-awaited [final rule](#) to amend its regulations implementing the National Environmental Policy Act of 1969 (NEPA), introducing important changes to the 40-year-old review process. The statute requires federal agencies to take a “hard look” at the environmental impacts of certain proposed projects, but does not mandate any particular outcome. The final rule follows CEQ’s June 2018 Advanced Notice of Proposed Rulemaking ([ANOPR](#)) and the January 2020 Notice of Proposed Rulemaking ([NOPR](#)), which we previously discussed [here](#).

To read more, [click here](#).

[FERC Proposes Overhaul of Dam Safety Regulations](#)

The Federal Energy Regulatory Commission (Commission or FERC) has proposed to revise its Part 12 dam safety regulations through a Notice of Proposed Rulemaking (NOPR) released at its monthly public meeting on July 14, 2020. There will be a 60-day public comment period once the proposed regulations are published in the Federal Register. The proposed revisions contain three major changes to the existing FERC dam safety regulations:

To read more, [click here](#).

[Federal Hydropower Legislative Proposals Introduced on Capitol Hill](#)

Throughout June 2020, a number of legislative proposals poised to impact hydropower resources have been introduced in Congress. On Monday, June 22, Democratic members of the House of Representatives released H.R. 2, the Moving Forward Act, which aims to encourage investment in infrastructure and includes several provisions on hydropower and dam safety. On Monday June 29, Congresswoman Cathy McMorris Rodgers (WA-05) introduced the Hydropower Clean Energy Future Act which includes updates to the licensing process for non-federal hydroelectric projects and promotes innovation of new generation technologies that would protect the environment and natural resources while providing additional reliability services to the nation’s electric grid. Finally, on June 30, Democratic

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members of the House Select Committee on the Climate Crisis released a Climate Crisis Action Plan, which includes provisions on hydropower and marine energy facilities.

To read more, [click here](#).

IN CASE YOU MISSED IT

- [In Significant Order on FERC Procedure, *En Banc* D.C. Circuit Rejects FERC's Use of Tolling Orders under the Natural Gas Act, Raising Significant Implementation Questions for All Pending and Future Proceedings](#)
- [Analyzing FERC's Order Updating PURPA Regulations for First Time in Almost 40 Years](#)
- [FERC Issues Federal Power Act "Exemption" in Lieu of Relicensing to Colorado Hydropower Project](#)
- [EPA Issues Draft Temperature TMDL for Columbia and Snake Rivers](#)
- [Supreme Court Determines that Area in Northeastern Oklahoma Constitutes a Reservation](#)
- [Aftermath of the Michigan Dam Failures: Licensee Delays and Possible ESA Concerns](#)
- [Rethinking Hydropower Eligibility for State Renewable Incentive Programs](#)
- [FERC Continues Trend Finding State Water Quality Certification Waiver](#)
- [FERC's New Rules for Physical Filings Become Effective](#)
- [Federal Courts Reach Opposite Conclusions Regarding Implementation of the Navigable Waters Protection Rule](#)
- [Effluent Limits for Stormwater – California Takes the Lead with Limits Effective July 1, 2020](#)
- [Long-Awaited EPA Rule Overhauls Section 401 of Clean Water Act](#)
- [President Trump Issues Executive Order Directing the Expedition of NEPA Reviews](#)
- [FERC Releases COVID-19 Technical Conference Agenda](#)
- [FERC Issues Order Finding Waiver of Water Quality Certification; California River Community Seeks State Action on Certification Waivers](#)

PUBLICATIONS

- [State Water Quality Certification: EPA Issues State Water Quality Certification \(CWA § 401\) Final Rule](#)

MEET THE TEAM



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Todd Fracassi is a partner in the Environmental Practice who represents clients primarily in matters of environmental enforcement and litigation, regulatory affairs, and corporate environmental counseling. Todd advises clients on a broad range of environmental matters, including environmental enforcement, compliance and permitting, mergers and acquisitions, real estate transactions, brownfield redevelopment, and remediation obligations under CERCLA, RCRA and other state remediation statutes and regulations.

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