



## Energy Regulation & Compliance

### HYDROPOWER

#### *Trusted Advisors to the Hydropower Industry*

Van Ness Feldman's leading hydropower practice team is one of the largest and most experienced in the United States. Our current and recent matters involve over 50 percent of all installed hydroelectric capacity in the United States. Additionally, the firm advises developers of new hydropower projects, including pumped storage and offshore ocean, wave, and tidal projects. Our capabilities include:

- FERC licensing and relicensing proceedings
- Regulatory compliance including enforcement proceedings
- Non-FERC federal and state regulatory requirements
- Dam safety and infrastructure security
- Water rights and supply contracts
- Natural resources permitting
- Asset transactions, including license transfers and due diligence review
- Design and development of public policy and federal tax strategies
- Litigation before state and federal courts
- Administrative litigation, including trial-type hearings under the hydropower reform provisions of the Energy Policy Act of 2005 (EPAct)

Our clients represent the full range of participants in the hydropower industry, from large corporations and state and municipal agencies, to individual developers, including:

- Government-owned electric utilities
- Investor-owned electric utilities
- Independent power producers
- Water supply agencies

#### *Broad Perspective on Complex Issues*

Van Ness Feldman knows the hydropower industry and offers the unique combination of legal pragmatism, practical expertise, and political perspective to help our clients identify effective solutions to emerging business problems. We understand how the key regulatory agencies work, and have well developed relationships at both the policy and career staff levels of agencies such as FERC, the

Department of the Interior, and other federal and state agencies. Throughout our various representations, we offer clients a unique perspective on the complex interplay of judicial, policy, and regulatory developments in the hydropower sector that allows clients a broad range of legal alternatives.

Our hydroelectric attorneys have particular experience with:

**Licensing and Relicensing.** Van Ness Feldman has participated in hundreds of hydropower licensing proceedings in all regions of the country. As experienced advocates before FERC, attorneys in the firm's hydroelectric practice have utilized FERC's Integrated Licensing Process (ILP), as well as the Traditional Licensing Process (TLP) and Alternative Licensing Process (ALP).

**Environmental and Resource Allocation Issues.** Van Ness Feldman has extensive experience navigating federal environmental programs applicable to hydropower facilities, including the Federal Power Act (FPA), National Environmental Policy Act (NEPA), Clean Water Act (CWA), Endangered Species Act (ESA), National Historic Preservation Act (NHPA), and Coastal Zone Management Act (CZMA).

**Settlement Strategy and Negotiation.** Van Ness Feldman has considerable experience negotiating and preparing multiparty settlements in licensing and relicensing proceedings. Our insight, objectivity, and understanding of technical issues have helped our clients resolve some of the largest, complex, and highly publicized relicensing proceedings in the industry.

**Litigation.** Van Ness Feldman is an effective advocate before FERC, the U.S. Supreme Court, the U.S. courts of appeal, federal district courts, state courts, and federal and state administrative and resource agencies. The firm is particularly well-suited to provide counsel and representation in trial-type hearings under EPAct, as it represented the hydroelectric licensee in the first full hearing under these new procedures.

**Regulatory Compliance.** Van Ness Feldman advises clients on regulatory interpretation and compliance matters and serves as counsel in agency proceedings involving federal dam safety requirements, FERC jurisdiction, civil penalties, annual charges, and headwater benefits.

**Asset Transactions.** Van Ness Feldman has significant experience with the negotiation of mergers, acquisitions, and other asset transactions. The firm also has conducted due diligence reviews on behalf of investment firms investing in, or conveying, hydro assets. In addition to this transactional experience, we are also able to facilitate the regulatory approvals needed to complete asset transactions.

**Public Policy.** Over the past two decades, Van Ness Feldman has worked on every major piece of federal energy legislation affecting the regulation of hydropower facilities, including EPAct. The firm also has led successful efforts to obtain targeted legislation for its clients, and has participated in numerous FERC and other federal agency rulemakings.

### *Representative Matters*

Select recent matters in which attorneys in the firm's hydroelectric practice have been actively involved include:

- **New York Power Authority (NYPA).** The firm serves as relicensing and compliance counsel for the 2,400 MW Niagara Power Project (including the 240 MW Lewiston Pumped Storage Plant), the largest FERC-licensed project in the United States, as well as NYPA's 912 MW St. Lawrence-FDR Power Project. During the relicensing of these facilities, our work consisted of early strategic planning; guidance through FERC's relicensing processes; scoping of studies; assistance in preparing the relicensing application; outreach to federal and state resource agencies and Indian tribes; and negotiating and preparing documents for a comprehensive settlement agreement among federal and state resource agencies and stakeholder interests. For each project, FERC approved the settlement and issued a new 50-year license before the expiration of the current license.
- **PacifiCorp.** The firm argued before the U.S. Court of Appeals for the D.C. Circuit, on behalf of intervenor PacifiCorp, in *Hoopa Valley Tribe v. Federal Energy Regulatory Commission* (FERC) (Case No. 09-1134). The case involves the Hoopa Valley Tribe's appeal of FERC's denial of certain interim environmental conditions to be imposed on the annual license for PacifiCorp's Klamath Hydroelectric Project. The firm also serves as counsel to PacifiCorp on licensing matters and in connection with the Klamath Hydroelectric Settlement Agreement, an agreement among the United States, the Governors of California and Oregon, and a number of local counties, irrigators, tribes and conservation groups providing for the future removal of PacifiCorp's licensed Klamath River dams. The D.C. Circuit justices requested information from FERC about the Settlement and, because FERC is not a party to the Settlement, FERC attorneys deferred to Van Ness Feldman to present facts about the Settlement and its impact on the D.C. Circuit proceeding.
- **Exelon.** The firm serves as FERC relicensing counsel for the relicensing of the 573 MW Conowingo Project and 800 MW Muddy Run Pumped Storage Project, both of which will be relicensed using FERC's ILP.
- **American Municipal Power (AMP).** The firm serves as licensing and compliance counsel for AMP's new project development activities on the Ohio River, including the 72 MW Smithland Project, 84 MW Cannelton Project, 35 MW Willow Island Project, and 48 MW R.C. Byrd Project.
- **Snohomish County Public Utility District (Snohomish).** The firm represents Snohomish in its relicensing of the 112 MW Jackson Project in Washington State, one of the first relicensings to use FERC's ILP.
- **Annual Charges Litigation.** The firm successfully represented a consortium of hydropower licensees before FERC and the U.S. Court of Appeals for the D.C. Circuit regarding FERC's annual charges program, which concluded in 2006 and resulted in over \$10 million in refund credits and substantially reduced annual charges bills.
- **California Department of Water Resources (DWR).** The firm serves as relicensing and compliance counsel for the 763 MW Oroville Facilities. We assisted DWR in negotiating a comprehensive relicensing settlement agreement, which is presently pending before FERC.
- **Toledo Bend Project Joint Operations.** The firm serves as relicensing and compliance counsel for the 86 MW Toledo Bend Project. The firm successfully defended the Sabine River Authorities of Texas and Louisiana in a recent challenge mounted at FERC by lakeside homeowners and downstream residents at the Toledo Bend Project. The challenge sought wholesale changes to project operations in a manner that would have significantly reduced operational flexibility and generation.

- **Sacramento Municipal Utilities District (SMUD).** The firm serves as relicensing and compliance counsel for SMUD's multi-unit Upper American River Project in California. In the relicensing proceeding, our work consisted of early strategic planning; guidance through the ALP; scoping of studies; assistance in preparing the relicensing application, which includes a proposal for a new 400 MW pumped storage unit; and negotiating and preparing settlement documents for a comprehensive settlement agreement.
- **City of Tacoma.** The firm serves as relicensing, litigation, and compliance counsel for the 131 MW Cushman Project. Additionally, the firm served as litigation counsel for the 462 MW Cowlitz River Project.