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Our current and recent matters involve over 50 percent of all installed hydroelectric capacity in the country.

Additionally, the firm advises developers of new hydropower projects, including conventional large and small hydro, pumped storage, and emerging technologies using wave and tidal energy.

Upcoming Speaking Engagements

- [Matt Love](#) and [Chuck Sensiba](#), Northwest Hydroelectric Association Annual Conference, Portland, OR, February 16-18, 2016

Hydro Newsletter

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Legislative Update

On January 27, 2016, the Senate began floor debate on S. 2012, the Energy Policy Modernization Act of 2015, the bipartisan energy bill reported out of the Senate Energy and Natural Resources Committee on July 30, 2015. As described in the [August 2015 Hydro Newsletter](#), the bill as reported out of committee still retains a number of hydro provisions. These include: (1) designating the Federal Energy Regulatory Commission (FERC) as lead agency for coordinating federal authorizations from all agencies needed to develop a hydroelectric project; (2) authorizing FERC to refer agency disputes to the Council on Environmental Quality; (3) requiring resource agencies to give equal consideration to developmental and non-developmental values when imposing mandatory conditions or prescriptions; (4) expanding the definition of renewable energy for federal programs to include all forms of hydropower; (5) extending the term of preliminary permits from three to four years and authorizing FERC to extend the initial permit term for an additional four years; (6) extending the start of construction date for new projects for up to eight additional years beyond the time set in the license; and (7) extending the eligibility window for the hydropower production incentives under the Energy Policy Act of 2005 to projects that add a turbine or other generating device between 2016 and 2025. Amendments may be offered on the hydropower and other provisions.

D.C. Circuit Denies Stay of Clean Power Plan

On January 21, 2016, the U.S. Court of Appeals for the D.C. Circuit denied a request by a number of states and industry groups to stay implementation of the "[Clean Power Plan](#)," a rule promulgated by the Environmental Protection Agency under section 111(d) of the Clean Air Act that sets carbon dioxide emission reduction goals for existing fossil fuel-fired electric generating units in the U.S. power sector. The final rule took effect on December 22, 2015. The states and industry groups requested that the court stay implementation of the rule pending completion of judicial review. The court found that the states and industry groups failed to satisfy the strict requirements for granting a stay. The court did, however, expedite consideration of the case and scheduled oral argument for June 2, 2016. The states and industry groups have now filed applications for a stay of the final rule to the U.S. Supreme Court, which remain pending.

FWS Revises ESA Protections for Northern Long-Eared Bat

On January 14, 2016, the U.S. Fish and Wildlife Service (FWS) published a [final rule](#) revising the Endangered Species Act section 4(d) regulations regarding prohibited take of the northern long-eared bat (NLEB). Like the preceding interim rule, the final rule prohibits all purposeful take of NLEB, and prohibits incidental take from certain activities that occur within the “white-nose syndrome zone” (WNS zone). The WNS zone includes the counties within the range of the NLEB that are within 150 miles of the boundaries of United States or Canadian counties where WNS or the contributing fungus has been detected, and covers the entire Northeast and Mid-Atlantic, as well as portions of the Midwest and South. For activities within the WNS zone, the final rule narrows the scope of the incidental take prohibition to: (1) actions in known hibernacula (caves, mines, and other locations where NLEB hibernate in winter); (2) actions that alter a known hibernaculum’s entrance or interior environment if the action impairs an essential behavior pattern; and (3) tree-removal activities near a known hibernaculum or affecting occupied maternity roost trees during the pup season (June 1 through July 31). Thus, the final rule’s incidental take prohibition is predicated solely upon location (proximity to hibernacula and roost trees) and, for tree removal not proximate to a hibernaculum, the time of activity (June 1 through July 31). The final rule’s 4(d) regulations become effective on February 16, 2016.

FERC Formalizes Role of Landowner Helpline

On January 21, 2016, FERC issued an [Instant Final Rule](#) substituting its Landowner Helpline in place of its Dispute Resolution Service (DRS) as the entity to handle dispute-related calls, emails, and letters to FERC relating to construction and operation of FERC-jurisdictional infrastructure projects. Although the Landowner Helpline has informally addressed these issues for the past year, some correspondence was still going to the DRS. The new rule clarifies that the Landowner Helpline, rather than DRS, will handle all such correspondence, and revises FERC’s regulations accordingly. The change reflects an internal reorganization in which the DRS moved from FERC’s Office of Administrative Litigation to the Office of Administrative Law Judges, with the resulting new office named the Office of Administrative Law Judges and Dispute Resolution. The Landowner Helpline function is housed within that newly combined office.

Obama Administration Continues Quadrennial Energy Review

On February 4, 2016, the Obama administration will hold a public stakeholder meeting in Washington, D.C., on the second installment of the Quadrennial Energy Review (QER), an integrated study of the U.S. electricity system. The QER focuses on energy infrastructure and identifies the threats, risks, and opportunities for U.S. energy and climate security to support translation of the administration’s policy goals into actions. The first installment focused on energy transmission, storage, and distribution infrastructures and resulted in an April 21, 2015 [report](#). The initial report highlighted the dependency of energy infrastructures and the economy on electricity.

The second installment will review the nation’s electricity system from generation to end use, including a more comprehensive look at the transmission, storage, and distribution infrastructure covered in installment one. It will consider the roles and activities of actors, industries, and institutions essential to providing reliable and affordable electricity. Topics will include fuel choices, distributed and centralized generation, physical and cyber vulnerabilities, federal, state, and local policy direction, consumer expectations, and existing and evolving business models.

The February 4, 2016, meeting will feature remarks by senior administration officials and members of Congress, and morning and afternoon panel discussions, followed by a public comment period. The meeting will also be live streamed. Written comments may be submitted through July 1, 2016. Additional information can be found at the QER [website](#).

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