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**State of Vermont
Agency of Natural Resources**

Julia S. Moore, P.E.
Agency Secretary

Peter W. Walke
Deputy Secretary

September 12, 2017

The Honorable Paul Ryan, Speaker
United States House of Representatives
H-232 The Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi, Minority Leader
United States House of Representatives
233 Cannon House Office Building
Washington, D.C. 20515

RE: Comments in opposition to Hydropower Policy Modernization Act of 2017, H.R. 3043

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 essentially 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 year. 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,

A handwritten signature in blue ink, appearing to read "Julia S. Moore".

Julia S. Moore, P.E.
Secretary

Cc: Senator Patrick Leahy (VT)
Senator Bernie Sanders (VT)
U.S. Representative Peter Welch (VT)