

# Regulatory and Policy Developments in New Hydropower

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# Topics

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- Pending hydropower legislation
- Tax reform and production incentives
- FERC license term Notice of Inquiry
- Two year pilot license process
- Alaska federal lands rulemaking





# Pending Hydropower Legislation

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- H.R. 3043 and S. 1460 licensing reform bills
- Includes many of the same regulatory reforms to hydropower relicensing proposed as part of the energy bills approved by last Congress.
  - Gives FERC authority to set schedules for all federal actions relative to the license & sets FERC as lead agency for NEPA.
  - Clarifies and improves language in 2005 law on ability to offer alternatives and equal consideration.
  - Moves trial-type hearings from federal resource agencies to FERC.
  - Directs greater use of existing studies and data.
  - Authorizes FERC to grant preliminary permits terms for 4 years (instead of 3) with possibility for extensions up to 8 additional years.
  - Authorizes FERC to extend start of construction date for 8 additional years (instead of the 2-year extension currently authorized).



## Other Notable Hydro Bills

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- H.R. 2872 (Promoting Hydropower Development at Existing Non-Powered Dams Act): Bill provides that FERC may grant an exemption for qualifying hydropower facilities at non-powered dams operated for control, release, or distribution of water for agricultural, municipal, navigational, industrial, commercial, environmental, recreational, aesthetic, or flood control purposes.
- H.R. 2880 (Promoting Closed-Loop Pumped Storage Hydropower Act): Bill would establish focused licensing requirements for the expeditious review of license applications for closed-loop pumped storage projects.
- H.R. 2786 (Qualifying Conduits): Bill would eliminate 5 MW limit and reduce time for FERC to make a qualifying conduit determination decision for certain conduit facilities.
- S. 1029 (Exemptions for Small Dams Act): Bill would authorize FERC to issue exemptions to certain small, existing hydroelectric power projects that otherwise would need to obtain a new license from FERC.

# Tax Reform and Production Incentives

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- Hydropower production incentives have expired, but NHA has been lobbying Congress to extend them.
- S. 1336 would extend hydropower production incentives through FY 2027 (equivalent provision also in S. 1460).
- Fiscal Year 2018 Energy and Water Development Appropriations bill:
  - DOE Water Power Technologies Office would be funded at a total of \$53 million, with \$29 million for MHK activities and \$24 million for hydropower/pumped storage activities, including \$6.6 million for EPCA 2005 Section 242 hydropower production incentives.



# FERC License Term Notice of Inquiry



- November 2016 Notice of Inquiry (NOI) on whether FERC's existing license term policy should be modified.
- Current policy provides for license term of 30 to 50 years based on proposed redevelopment, new capacity, and environmental measures.
- Among the options proposed was a default license term of 50 years or consideration for measures implemented under the prior license.
- FERC received over 40 comments, including industry, environmental community, federal and state resource agencies, and others. Commenters' advocated for a range of solutions; no consensus.
- With quorum now, restored, FERC may move forward with addressing the NOI in the future.



# Two-Year Pilot License Process

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- May 2017 FERC report to Congress on two-year pilot license process.
- Two-year licensing / small hydro exemption process feasible under current regulations.
- Site-selection, well-defined proposal, thorough pre-filing consultation, complete application necessary.
- Certain design, environmental characteristics increase likelihood of two-year process.





# Alaska Federal Lands Rulemaking

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- August 2017: FERC Notice of Proposed Rulemaking (NOPR) to revise methodology for calculating annual charges for use of government lands in Alaska.
- NOPR was issued in response to petition for rulemaking filed by group of Alaska hydropower licensees.
- Proposes to use statewide average per-acre land value, rather than regional per-acre land values based on data published in NASS Census.
- Statewide average would be calculated using average of Kenai Peninsula and Fairbanks per-acre land values.
- Comments due October 30, 2017.

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