



August 1, 2016

Major General Donald E. Jackson  
Deputy Commanding General for Civil and Emergency Operations  
United States Army Corps of Engineers  
441 G Street NW  
Washington, DC 20001

**RE: National Hydropower Association Comments on *Proposal to Reissue and Modify Nationwide Permits*,  
Docket Number COE-2015-0017**

Major General Jackson:

On June 1, 2016, the United States Army Corps of Engineers (Corps) issued a notice of proposed rulemaking (NPR) entitled *Proposal to Reissue and Modify Nationwide Permits*,<sup>1</sup> that would reissue the existing nationwide permit (NWP) program for five years. In addition to the existing NWPs, the Corps is proposing two new NWPs and one new general condition. The National Hydropower Association (NHA)<sup>2</sup> appreciates the opportunity to submit these comments for your consideration.

**I. Nationwide Permit 17 – Hydropower Projects**

The Corps is not proposing any changes to the terms of NWP 17. However, regardless of whether substantive changes to an existing NWP are proposed, the NPR is “soliciting comments on all the nationwide permits, general conditions, and definitions as well as all NWP application procedures including the PCNs.”<sup>3</sup>

NWP 17 currently states:

Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended.

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<sup>1</sup> Proposal to Reissue and Modify Nationwide Permits, Proposed Rule, 81 Fed. Reg. 35186 (June 1, 2016)

<sup>2</sup> NHA is a national non-profit association dedicated to advancing the interests of the North American hydropower industry, including conventional, pumped storage, and new marine and hydrokinetic technologies. NHA’s membership consists of over 220 organizations, including consumer-owned utilities, investor-owned utilities, independent power producers, project developers, equipment manufacturers, environmental and engineering consultants, and attorneys.

<sup>3</sup> 81 Fed. Reg. at 35197.

NHA recommends that the 5000 kW generating capacity threshold under part (a) be increased to 10000 kW. This modification would align NWP 17 with recent statutory changes made to hydropower licensing through the Hydropower Regulatory Efficiency Act of 2013, which increased FERC’s small hydro exemption threshold from 5000 kW to 10000 kW. Further, increasing the generating capacity of NWP 17 to 10000 kW is responsive to the administration’s initiatives related to utilizing hydropower potential at our nation’s existing non-powered dams,<sup>4</sup> reducing regulatory burdens, and modernizing infrastructure permitting.<sup>5</sup>

## II. Proposed NWP A – Removal of Low-Head Dams

NHA appreciates the Corps effort to reduce administrative burdens on low-head dam owners who may choose to remove their dams. However, we are concerned about the Corps’ one-sided characterization and generalization of the adverse environmental impacts of low-head dams, and we recommend a balanced analysis of both the impacts and benefits of low-head dams.

The Corps states that proposed NWP A will “facilitate the removal of low-head dams that are no longer being used for their intended purposes or are too costly to repair.”<sup>6</sup> However, the discussion supporting NWP A and the proposed definition of low-head dams – “a dam built across a stream to pass flows from upstream over the entire width of the dam crest on an uncontrolled basis” – does not specify how the Corps will determine whether a low-head dam is actually being used for its intended purpose or what factors will be considered when determining whether it would be too costly to repair. For example, if a low-head dam fits the proposed definition for removal, but is also a good candidate for adding new hydropower capacity, how will the Corps balance removal with the clean and renewable generation benefits, as well as other license requirements that could result in environmental and public safety enhancements.

Proposed NWP A focuses solely on the adverse environmental impacts of low-head dams and, as drafted, perpetuates the rhetoric that **all** low-head dams are responsible for the adverse environmental impacts

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<sup>4</sup> See- *Hydropower Vision: A New Chapter for America’s 1<sup>st</sup> Renewable Electricity Resource*, available at: <http://energy.gov/eere/water/articles/hydropower-vision-new-chapter-america-s-1st-renewable-electricity-source> (July 2016); *The President’s Climate Action Plan*, available at: <https://www.whitehouse.gov/the-press-office/2013/06/25/fact-sheet-president-obama-s-climate-action-plan> (June 2013).

<sup>5</sup> See- Exec. Order No. 13563, 14 Fed. Reg. 3821 (January 18, 2011) Improving Regulation and Regulatory Review; Exec. Order 13610, 93 Fed. Reg. 28469 (May 14, 2012) Identifying and Reducing Regulatory Burdens; Exec. Order No. 13604, 60 Fed. Reg. 18887 (March 22, 2012) Improving Performance of Federal Permitting and Review of Infrastructure Projects; and *Implementing Executive Order 13604 on Improving Performance of Federal Permitting and Review of Infrastructure Projects* (June 15, 2012).

<sup>6</sup> 81 Fed. Reg. at 35203.

discussed, and that the removal of *all* low-head dams will result in the environmental benefits described. NHA recommends a more balanced approach to the consideration of both benefits and impacts of low-head dams.

### **III. Nationwide Permit 52 - Water-Based Renewable Energy Generation Pilot Projects**

In 2011, NHA submitted comments supporting the creation of a water-based renewable energy NWP, and in those comments we encouraged the Corps to eliminate the 10-unit generation limit because of the potential the limit could have on the economics of a given project.

In response to the current NOPR, NHA continues to support the removal of the 10-unit limit for water-based renewable energy generation units, so long as it applies equally to all technologies under NWP 52. In addition, NHA supports removal of the limit of NWP 52 to pilot projects, to further encourage development of water-based renewable energy projects.

### **IV. Conclusion**

NHA appreciates the opportunity to provide comments on the Corps *Proposal to Reissue and Modify Nationwide Permits*. We believe our recommendations related to NWP 17 and 52, and Proposed NWP A, are consistent with recent statutory changes to hydropower licensing, are in alignment with the administration's initiatives to utilize the hydropower potential at existing infrastructure, and will result in administrative efficiencies without undermining environmental values.

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda Church Ciocci".

Linda Church Ciocci, Executive Director