



Van Ness Feldman is home to the premier hydropower law practice in the United States and to one of the largest and most experienced teams of attorneys available. 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.

# Hydro Newsletter

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### FERC Limits Municipal Preference

In late December 2013, the Federal Energy Regulatory Commission (FERC) reversed more than 90 years of precedent and statutory interpretation when it issued an [order](#) holding that municipal preference under section 7(a) of the Federal Power Act (FPA) applies only to hydropower projects located in the "vicinity" of the municipality. The case began in February 2013, when two entities filed preliminary permit applications to study the feasibility of the Saylorville Dam Water Power Project in Iowa. Van Ness Feldman client Western Minnesota Municipal Power Agency (WMMPA), located approximately 400 miles from the project site, claimed municipal preference under FPA section 7(a); the other applicant was a non-municipality. Instead of applying the municipal preference to award the permit to WMMPA, FERC held a drawing to determine which application would be granted priority, and the non-municipal applicant won.

In its order granting the permit to the non-municipal applicant and denying municipal preference to WMMPA, FERC significantly limited the scope of the municipal preference it has applied since the passage of the FPA by declaring that the preference applies only to municipalities developing hydropower projects that are "located in their vicinity." Without clear geographic parameters regarding a municipality's "vicinity," there are likely to be many disputes in competitive proceedings about whether a proposed project is in the "vicinity" of the municipal applicant. WMMPA and the American Public Power Association have filed requests for rehearing of FERC's order, so stay tuned.

### FERC Solicits Pilot Projects to Test Two-Year Licensing Process

On January 6, 2014, FERC issued a [Notice Soliciting Pilot Projects to Test a Two-Year Licensing Process](#) (Notice). The Notice follows FERC's October 2013 workshop to solicit recommendations on the feasibility of a two-year licensing process, which the Hydropower Regulatory Efficiency Act of 2013 (HREA) directed FERC to investigate. According to the Notice, eligible pilot projects must: (1) be located at a non-powered dam or be a closed-loop pump storage project; (2) cause little to no change to existing surface and groundwater flows and uses; and (3) be unlikely to adversely affect federally-listed threatened and endangered species. In addition, if the project is proposed to be located at or use a federal dam, the request must include a letter from the dam owner that the applicant's plan of development is conceptually feasible; if the project would use any public park, recreation area, or wildlife refuge established under state or local law, the request must include a letter from the managing entity indicating its approval of the site's use for hydropower development; and if the project is closed-loop pumped storage, the project must not be continuously connected to a naturally-flowing water feature.

Eligible projects must be fairly far along in the planning process. Specifically, a prospective applicant's request must show an adequate consultation record, include a pre-application document and proposed

**SPOTLIGHT:**

**Julia Wood**



*Julia first joined the firm as a summer associate in 2002 and quickly became hooked on hydro. She has worked on and is currently involved in a number of major relicensing proceedings at FERC, and also focuses on emerging legal issues involving hydrokinetics and other offshore renewables.*

**Where did you grow up?**

Binghamton, NY – where the Chenango River meets the Susquehanna.

**Did you always aspire to be an attorney? How long have you been in practice?**

After obtaining my B.A. at a liberal arts college, I landed a great job at the Department of Justice. Not until then did I even consider going to law school. But I'm exceptionally glad I pursued it. I'm now in my eleventh year at Van Ness Feldman.

**What drew you to hydropower?**

The huge range of interesting issues associated with hydro regulation, from power generation and flows to land use and recreation. I could never have imagined in law school that as an attorney, I'd be doing things like eating hot dogs with boy scout leaders (which I did once to discuss the removal of a camp from a FERC project boundary).

study plan, identify potential environmental impacts of the project, and include a process plan and schedule. Requests to test a two-year pilot process must be filed with FERC between February 5, 2014 and May 5, 2014.

At FERC's January meeting, FERC staff [reported](#) on FERC's efforts implementing the two-year licensing process and FERC's implementation of the other requirements of the HREA, including qualifying conduit determinations and preliminary permit term extensions.

**Regional Recommendation on the Future of the Columbia River Treaty Released**

On December 13, 2013, the administrator of the Bonneville Power Administration and the Northwestern Division engineer of the U.S. Army Corps of Engineers—together, the U.S. Entity—issued a [recommendation](#) to the U.S. Department of State on the future of the Columbia River Treaty. The Treaty was originally negotiated in the 1960s by the United States and Canada to address flood control and hydropower production on the Columbia River, and it can be modified or terminated after 2024 with 10 years' notice. The U.S. Entity met with a range of stakeholders including the Northwest states, federal agencies, hydropower producers (including a coalition of utilities represented by Van Ness Feldman), Native American tribes, and environmental groups in developing its recommendation. The recommendation urges the State Department to rebalance the hydropower benefits of the original treaty, formally incorporate ecosystem benefits into the treaty framework, and integrate climate change assessments into the flood control framework. The State Department has indicated that an inter-agency group will now review the recommendation on behalf of the President.

**Executive Order Establishes Renewable Energy Targets for Federal Agencies**

On December 5, 2013, President Obama issued a [presidential memorandum](#) establishing a renewable energy target for federal agencies of 10 percent of the total amount of electric energy consumed by each agency by 2015, and 20 percent by 2020. Agencies will be able to meet these goals by installing renewable energy on-site, purchasing renewable energy certificates, and contracting for renewable energy projects at federal facilities. New hydropower achieved from increased efficiency or additional capacity at existing projects, as well as hydrokinetic projects, qualify. This memorandum builds on the sustainability goals first set forth in Executive Order 13514— issued in 2009 and entitled "Federal Leadership in Environmental, Energy, and Economic Performance"—and is intended to improve agency energy consumption and reduce greenhouse gas emissions.

**Hydro Legislation and Policy Update**

As Congress reconvenes this session, its initial hydro-related focus will likely be on moving forward several bills introduced last session. Passage of the 2013 Water Resources Development Act (WRDA), for example, will be a priority issue for Senate Environment and Public Works Committee Chairwoman Barbara Boxer (D-CA) and Ranking Member David Vitter (R-LA). Specific provisions of note for the industry include language in the Senate version of the WRDA bill (S. 601) that aims to improve the environmental review process by giving priority to the development of non-federal hydropower at U.S. Army Corps of Engineers facilities. This language was not included in the House-passed version of the legislation (H.R. 3080), and negotiators have been unable to reach a compromise between the two versions of the bill, which more broadly addresses a wide range of issues relating to water resources. However, both Senators Boxer and Vitter have indicated they hope a conference report on the bill will be released in early 2014.

Other hydropower-related legislation in the queue includes the Hydropower Development Equity and Jobs Act (H.R. 1963), which would authorize conduit hydropower development at certain Bureau of Reclamation projects, and the Marine and Hydrokinetic Renewable Energy Act of 2013 (S.1419), which seeks to improve the approval process for hydrokinetic projects using wave, tidal and current energy. Currently H.R. 1963 is awaiting action in the Senate after passing the House in early December 2013, while S.1419, sponsored by Senate Energy Committee leaders Ron Wyden (D-OR) and Lisa Murkowski

**Spotlight (continued)**

**In your opinion, what sets Van Ness Feldman apart from other firms with hydropower practices?**

Our incredible and unmatched institutional knowledge of hydropower regulation. Our representation of projects in every area of the country. Our ability to skillfully assist clients on absolutely any energy and environmental issue, hydro or otherwise.

**What would you be doing if you weren't an attorney?**

Writing, which incidentally is one of my favorite aspects of the job.

**What are the last three books you read?**

Truthfully? Duck and Goose Find a Pumpkin, Goodnight Moon, and Amanda Pig, Schoolgirl. I highly recommend all three.

**Upcoming VNF Speaking Engagements:**

Chuck Sensiba, *Low-Head Hydro Development*, Water Power Report 2nd Annual Operations and Management Workshop, Phoenix, Arizona, February 12-13, 2014.

Chuck Sensiba and Matthew Love, *Emerging Legal Issues*, Northwest Hydroelectric Association Annual Conference, Seattle, Washington, February 18-20, 2014.

(R-AK), awaits consideration by the Senate Energy Committee. Senator Mary Landrieu (D-LA), who is poised to replace Senator Wyden as Chair of the Committee, brings recent and active experience in promoting hydropower within her state.

Finally, Senate Finance Committee Chairman Max Baucus (D-MT) has released an energy tax reform discussion draft that impacts incentives for the hydropower industry, including the production tax credit, investment tax credit, Clean Renewable Energy Bonds, and the 48C advanced energy tax credit for manufacturers. While the likelihood of meaningful action on the energy tax reform bill decreased after President Obama announced Senator Baucus's nomination to be the next ambassador to China, this language could be used for future energy tax reform proposals.

**Pumped Storage Plays a Large Role in DOE's Grid Storage Energy Report**

The Department of Energy recently issued a report entitled *Grid Energy Storage*, highlighting the United States' power grid's dependence on pumped storage hydropower, which makes up 95 percent of total grid energy storage. Commissioned by Senate Energy and Natural Resources Committee Chairman Ron Wyden (D-OR), the report acknowledges that energy storage plays a crucial role in increasing grid resilience, improving operations and efficiency, lowering costs, and deferring additional infrastructure investment. It highlights four challenges to the widespread deployment of energy storage: cost competitive energy storage technologies (including manufacturing and grid integration), reliability and safety, equitable regulatory environment, and industry acceptance. The report identifies pumped storage as a mature commercial utility-scale technology with very specific geographic requirements making its installation heavily site-dependent. The report indicates that new capabilities of pumped storage, through the use of variable speed pumping, is opening the potential for provision of additional services that could be used to assist in the integration of variable generation sources—an ongoing interest at FERC.

*Julia Wood, Michael Pincus, Megan Walters, Sharon White, Gabriel Tabak, and Mealear Tauch contributed to this edition.*

Founded in 1977 and now with over 100 professionals in Washington, D.C. and Seattle, WA, Van Ness Feldman provides strategic business advice, legislative and policy advocacy, legal and regulatory compliance counsel, representation in administrative proceedings and litigation, and support for project development, permitting, and transactions in the inter-related areas of energy, the environment, natural resources, public lands, real estate, health care, land use, and infrastructure.

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