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September 18, 2001

James Connaughton
Chairman
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Dear Chairman Connaughton:

I am writing on behalf of the National Hydropower Association (NHA) to ask the Council's Energy Streamlining Task Force, in cooperation with the Departments of Interior and Commerce, to immediately rescind the Proposed Interagency Policy on the Prescription of Fishways Under Section 18 of the Federal Power Act (FPA) published on December 22, 2000 in the Federal Register (F.R. Docket No. 001215356-0356-01). Further, we ask CEQ's Task Force to direct the Departments to immediately halt any unilateral actions related to this proposed policy.

Section 1701(b) of the National Energy Policy Act of 1992 vacated the Federal Energy Regulatory Commission's (FERC) definition of fishways. The Act clearly delegates to FERC the authority to redefine fishways *by rulemaking* with the concurrence of the Secretaries of Interior and Commerce. The Departments' proposal evades the express intent of Congress, oversteps the authority of the Departments and directly conflicts with President Bush's hydropower recommendations contained in the National Energy Policy released in May.

The proposed policy is deeply flawed and greatly unbalanced. The proposal creates a definition of fishways prior to any action by FERC. It also is designed to greatly extend to the Departments' authority over all aspects of fishways. The proposal broadly defines "fishways" to include virtually any project structure or operational measure related to fish. The term "fish" was also redefined to include virtually every form of water-related animal life other than mammals and birds. Further, it provides the agencies virtually unbounded authority to prescribe new or modified fishways *throughout the term of a license*.

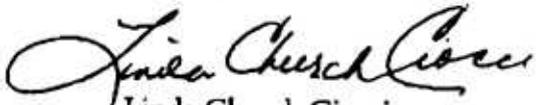
The President's National Energy Policy recognized hydropower as a valuable renewable energy resource and recommended legislative and administrative improvements to the licensing process, stating that there "is a need to reduce the time and cost of the hydropower licensing process" and that the process be "more clear and efficient." The policy proposal, on the other hand, would result in overlapping and conflicting federal roles in the licensing process, would increase the uncertainties for licensees and other stakeholders, would cause excessive delays in issuing a new license and could cost the hydropower industry billions of dollars. It would exacerbate many of the problems that currently plague the hydropower licensing process.

As we face rising energy prices, increased levels of pollution and greenhouse gases, energy shortages and reliability concerns, this is the least opportune time, when viewed from the public interest perspective, for the Departments to mount a campaign for unbounded expansion of their prescriptive powers. Now is clearly the time for policymakers at the federal level to better incorporate hydropower into the nation's energy strategies, rather than devise policies that further diminish a resource that is so vital to energy adequacy, diversity and security.

The National Hydropower Association again asks that the Departments' proposed policy statement on fishways be immediately rescinded. Further, we ask that the Departments follow the intent of Congress and fully cooperate with FERC if a formal rulemaking is initiated by the Commission to, per the direction of Congress, define fishways and processes – including an appeals process – related to the development of fishways under Section 18 of the Federal Power Act. We hope you will quickly adopt our recommendations and we look forward to working with you and the Administration on this important matter.

If you have any questions, please contact me, or Mark R. Stover, NHA's Director of Government Affairs, at 202-682-1700.

Sincerely,


Linda Church Ciocci
Executive Director

cc: Secretary Gale Norton, U.S. Department of Interior
Secretary Donald Evans, U.S. Department of Commerce
Deputy Secretary J. Steven Griles, U.S. Department of Interior
Chairman Pat Wood, Federal Energy Regulatory Commission
Dr. William Hogarth, Administrator, National Marine Fisheries Service