



Charles Sensiba

Partner

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A recognized national leader in hydropower licensing, relicensing, and license implementation and compliance, including all federal environmental and other regulatory policies affecting hydropower, Chuck provides strategic, legal, and policy counsel on a full range of existing and emerging issues affecting the hydropower industry.

Located in:

Washington, D.C.

Areas of Focus:

Hydropower

FERC

Natural Resources

Chuck, a leading authority in hydropower, is one of the very few attorneys nationwide whose practice focuses exclusively on licensing, relicensing, regulatory, and policy issues affecting the hydropower industry. He handles a full spectrum of matters, including complex licensing and relicensing, as well as natural resources and environmental issues, related to the regulation of hydropower operation and development. Chuck's clients – including investor-owned utilities, public power, electric cooperatives, governmental entities, water districts, and independent power producers – benefit from his wide-ranging, national experience.

In particular, Chuck handles matters under the Federal Power Act, National Environmental Policy Act, Endangered Species Act (ESA), Clean Water Act (CWA), National Historic Preservation Act, Federal Land Policy and Management Act, and Coastal Zone Management Act. His work includes successful representation in scores of hydroelectric relicensing proceedings before the Federal Energy Regulatory Commission (FERC), as well as matters pertaining to license implementation and compliance; administrative and appellate litigation before the U.S. Courts of Appeal on hydropower licensing and administrative matters; and policy work before the U.S. Congress. In the water power industry, Chuck serves clients ranging from some of the largest and most complex facilities in the nation; to small water supply projects.

A recognized thought leader on issues affecting the hydropower industry, Chuck is a prolific author, having published scores of pieces in journals and leading legal reference materials, including *Energy Law and Transactions*; *Waters and Water Rights*; *ABA Natural Resources and Environment*; *The Water Report*; and *Irrigation Leader*. He is also a regular speaker on hydro issues, addressing organizations and conferences including the National Hydropower Association, HydroVision International, Northwest Hydroelectric Association and National Water Resources Association.

Chuck currently serves on the board of directors of the National Hydropower Association.

Representative Matters

- **Grand River Dam Authority (GRDA).** Serves as regulatory and strategic counsel to GRDA on a full range of FERC relicensing and compliance matters, environmental and natural resources issues, federal lands, and Native American law related to the 105 MW Pensacola Project, the 108 MW Markham Ferry Project, and the 260 MW Salina Pumped Storage Project. Currently serves as relicensing counsel for the Pensacola Project through FERC's Integrated Licensing Process (ILP). Previously represented GRDA before FERC in a major FERC license amendment proposing changes to the project's reservoir operations – a proposal that was approved by FERC over the strong opposition of numerous federal and state agencies, local interests, and several federally recognized tribes.
- **Southern California Edison (SCE).** Serves as hydropower relicensing and compliance counsel for SCE in the FERC decommissioning of the 2.25 MW San Geronio Project; the FERC relicensing of the 949.6 MW Big Creek System; license implementation and compliance matters related to the 3 MW Lundy Project and 11.9 MW Rush Creek Project; and in the ongoing FERC relicensing (through the ILP) of the 6.9 MW Kaweah Project.
- **PacifiCorp.** Advises PacifiCorp on complex matters related to the ongoing relicensing and proposed decommissioning of the 169 MW Klamath Hydroelectric Project in California and Oregon.
- **Chelan County Public Utility District (Chelan PUD).** Serves as hydropower relicensing and regulatory counsel to Chelan PUD for the 59 MW Lake Chelan Hydroelectric Project, the 421 MW Rock Island Hydroelectric Project and the 866 MW Rocky Reach Hydroelectric Project. Currently provides early strategic advice related to the upcoming relicensing of the Rock Island Project; permitting requirements of the U.S. National Park Service for hydropower located within Lake Chelan National Recreation Area; dam safety matters; relicensing settlement implementation; and FERC license compliance requirements for a proposed rehabilitation of the Rock Island Project.
- **NorthWestern Energy.** Serves as FERC hydropower relicensing counsel to NorthWestern in the relicensing of the 93 MW Thompson Falls Project in Montana, including issues related to federal lands and ESA-listed bull trout.
- **WEC Energy Group (WEC).** Serves as FERC hydropower regulatory counsel to WEC with regard to its fleet of more than two dozen hydropower projects (licensed to Wisconsin Electric Power Co., Wisconsin Public Service Corp. and Wisconsin River Power Co.) within the Wisconsin River and Menominee River basins in Wisconsin and Michigan.
- **Sabine River Authorities of Texas and Louisiana (SRA).** Serves as FERC hydropower counsel to the SRAs for the 82 MW Toledo Bend Project – one of the largest reservoirs in the United States and the most expansive licensed by FERC. Negotiated two separate comprehensive relicensing settlement agreements for the continued operation of the project, including a 50-year new license term (the maximum term authorized by federal law). Obtained special, targeted federal legislation to reduce regulatory burdens related to federal lands at the project, including National Forest lands and congressionally designated

wilderness area. Currently advises the SRAs on license implementation and compliance matters.

- **Portland General Electric (PGE).** Serves as FERC hydropower regulatory counsel to PGE for the 17 MW Willamette Falls Project, the 137 MW Clackamas River Project, and the 367 MW Pelton Round Butte Project. Currently advises PGE on FERC licensing requirements related to reconstruction of the more than 100-year-old Faraday Powerhouse (part of the Clackamas Project).
- **New York Power Authority (NYPA).** Serves as relicensing counsel to NYPA in the relicensing of the 11.8 MW Crescent Project and 11.8 MW Vischer Ferry Project. Served as FERC regulatory counsel to NYPA for the relicensing of the 1,160 Blenheim-Gilboa Pumped Storage Power Project, which is being relicensed through FERC's ILP, including serving as lead negotiator for NYPA in a comprehensive relicensing settlement, which was executed and filed with FERC in early 2018. Served as relicensing counsel to NYPA in the successful relicensing of the 912 MW St. Lawrence-FDR Power Project and 2,756 MW Niagara Power Project.
- **South Carolina Public Service Authority.** Serves as FERC hydropower relicensing and regulatory counsel for the 135 MW Santee Cooper Project.
- **State of Alaska.** Served as FERC regulatory counsel and strategic advisor to the state on a full range of issues concerning FERC licensing, environmental and natural resources, and public lands, as they related to the proposed 600 MW Susitna-Watana Hydroelectric Project, which was proposed to be the first large, new-dam hydroelectric project constructed in the United States in more than four decades. Represented the state in consultation with NPS, the U.S. Bureau of Land Management, Alaska Native entities, and the Alaska Department of Fish and Game on issues related to terrestrial and aquatic species, public recreation, land use, and socioeconomics, as well as issues arising under the Wildlife and Scenic Rivers, Alaska Statehood Act, and federal lands. Currently represents the state on hydropower regulatory matters regarding the 120 MW Bradley Lake Project.
- **National Hydropower Association (NHA).** Serves as strategic and policy counsel to NHA before the U.S. Congress, the administration, and departmental agencies and bureaus on a wide array of emerging policy issues affecting the hydropower industry.
- **Southeast Alaska Power Agency (SEAPA).** Serves as FERC regulatory and hydropower policy counsel for SEAPA related to the 22 MW Swan Lake Project and the 20 MW Tye Lake Project. Successfully represented SEAPA before Congress, the administration, and departmental agencies in obtaining special legislation that conveyed federal lands needed for the project within Tongass National Forest to the State of Alaska.
- **Kodiak Electric Association (KEA).** Served as FERC regulatory and federal policy counsel for KEA with regard to the 36 MW Terror Lake Project, including obtaining targeted federal legislation to address complex regulatory requirements arising from the project's presence in Kodiak National Wildlife Refuge.
- **FERC Annual Charges Group.** Previously represented a coalition of hydropower licensees in protecting the hydropower industry's interests in annual charges billed by numerous federal resource agencies through FERC's annual charges program. This effort generated more than

\$100 million in refunds and cost savings to the coalition and resulted in the seminal ruling of the D.C. Circuit in *City of Tacoma v. FERC*, 331 F.3d 106 (D.C. Cir. 2003), which continues to provide benefits to the hydropower industry today.

- **FERC Federal Land Fees Litigation.** Successfully represented a large coalition of hydroelectric licensees in administrative litigation before FERC and in appellate proceedings concerning FERC's federal land fees program, which yielded more than \$20 million in refunds and cost savings following the court's ruling in *City of Idaho Falls v. FERC*, 629 F.3d 222 (D.C. Cir. 2011). Successfully argued the case before the D.C. Circuit.
- **Federal Power Site Reservation Litigation.** Successfully represented a large coalition of hydroelectric licensees in administrative litigation proceedings before FERC in overturning more than 30 years of precedent regarding FERC's treatment of hydropower lands subject to a federal power site reservation under Section 24 of the FPA.
- **Rulemakings, Policy Statements and Amicus Briefs.** Often serves as counsel to individual clients, industry associations, and coalitions in developing comments on major rulemakings, FERC policy statements and amicus briefs affecting hydropower. Examples of this work include:
 - *Los Angeles County Flood Control Dist. v. Natural Res. Def. Council Inc.*, 568 U.S. 78 (2013), and *South Florida Water Management Dist. v. Miccosukee Tribe*, 541 U.S. 95 (2004). Prepared amicus curiae briefs on behalf of hydropower interests to protect favorable precedent related to National Pollution Discharge Elimination Requirements at dams pursuant to Section 402 of the CWA.
 - *Catskill Mtns. Chapter of Trout Unlimited Inc. v. EPA*, 846 F.3d 492 (2d Cir. 2017), and *Friends of the Everglades v. South Florida Water Mgmt. Dist.*, 570 F.3d 1210 (11th Cir. 2009). Prepared amicus curiae briefs on behalf of hydropower interests supporting the Environmental Protection Agency's Water Transfers Rule.
 - FERC Order No. 774, Annual Charges for the Use of Government Lands, 142 FERC ¶ 61,045 (2013). Prepared comprehensive comments on FERC's Notice of Proposed Rulemaking on behalf of a large coalition of hydropower licensees.
 - Policy Statement on Establishing License Terms for Hydroelectric Projects, 161 FERC ¶ 61,078 (2017). Participated in early outreach to senior FERC staff and FERC commissioners in raising concerns related to FERC's policy for establishing license terms, and later led a large coalition of licensees and industry associations in preparing written comments on FERC's proposed new policy.

Representative matters may include engagements before joining Troutman Pepper.

Related Practices and Industries

- Hydropower
- FERC
- Natural Resources
- Energy
- Energy Policy + Legislation
- Environmental + Natural Resources
- Government + Regulatory
- Litigation
- Water Quality + Water Resources

Speaking Engagements

Chuck is a regular speaker on hydro issues, addressing organizations and conferences such as the National Hydropower Association, the National Water Resources Association, HydroVision International and the Northwest Hydroelectric Association. His recent presentations include:

- Speaker, “Legal and Regulatory Discussion,” NWA’s Fall Regional Workshop, September 13-15, 2022.
- Presenter, 29th Annual Endangered Species Act Conference, January 20-21, 2022.
- Presenter, 30th Annual Oregon Water Law Conference, November 4-5, 2021.
- Speaker, “Finding Certainty in Uncertain Times,” Troutman Pepper Webinar, February 24, 2021.
- Speaker, “Hydropower Licensing,” Northwest Hydroelectric Association Fall Regional Workshop, October 9-10, 2019.
- Speaker, “Hydropower – A New Look at Opportunities for America’s First Renewable Energy Resource,” Environmental and Energy Study Institute (EESI) and National Hydropower Association (NHA), April 24, 2019.
- Speaker, “Exploring Federal and State Regulatory Policy Changes,” Water Power Week in Washington, April 2, 2019.
- Speaker, “Reservoir of Recent Federal Legal and Policy Initiatives,” NorthWest Hydroelectric Association Conference, February 20, 2019.
- Speaker, “Solving ‘Flexibility Gap’: How Hydro, Solar and Wind Can Work Together,” Renewable Energy Webcast, May 4, 2018.
- Speaker, “NHA 2018 Legislative Update and Outlook,” Water Power Week in Washington, April 30, 2018.
- Speaker, “Hydroelectric Policy and Licensing,” Spring 2018 Joint CREPC WIRAB Conference, Vancouver, British Columbia, April 18, 2018.
- Speaker, “Legal and Policy Landscape in Flux,” NorthWest Hydroelectric Association Conference, February 2018.
- Speaker, NHA Regional Meeting in Girdwood, AK, Sept. 24, 2017.
- Speaker, “Emerging Federal Policy Affecting Hydro Development,” U.S. Society of Dams meeting in Girdwood, AK, Sept. 20, 2017.
- Speaker, “FAST, WRDA, HREA and Other Regulatory Developments That Will Affect Hydro Licensing,” HydroVision International 2017, Denver, CO, June 27, 2017.
- Speaker, “New Hydropower Development in Alaska: Challenges and Opportunities,” National Hydropower Association’s Alaska Regional Meeting, National Hydropower Association, Cordova, AK, Sept. 19, 2016.
- Presenter, “Hydro Permitting Roundtable,” National Water Resources Association’s Western Water Seminar 2016, Sun Valley, ID, Aug. 3, 2016.

- Presenter, “Relicensing: TLP vs. ILP,” 2016 National Hydropower Association Northeast Regional Meeting, Philadelphia, PA, June 2, 2016.
- Speaker, “Overlapping Jurisdiction Issues in Licensing,” EBA Primer Series: An Introduction to Hydropower Law and Regulation, Energy Bar Association and the National Hydropower Association, Boston, MA, Sept. 15, 2014.

Publications

Chuck is a frequent author on various issues affecting the industry, publishing dozens of pieces in such journals as *Energy Law and Transactions*; *ABA Section of Environment, Energy, and Resources Newsletter*; *The Water Report*; and *Irrigation Leader*. Some of his recent articles include:

- Co-author, “EPA’s Clean Water Act Certification Proposal to Significantly Impact Hydropower Licensing,” *Pratt’s Energy Law Report* (Vol. 22-10), November-December 2022.
- Co-author, “Infrastructure Bill Provides Opportunities for Hydroelectric Industry,” *Troutman Pepper*, November 9, 2021.
- Co-author, “The Fourth Circuit Weighs in on the Interpretation of CWA Section 401,” *Environmental Law and Policy Monitor*, July 7, 2021.
- Co-author, “What a New Administration Means in the World of Water Quality,” *The Water Report*, February 15, 2021.
- Co-author, “Emerging Developments in Water Quality Certification for Federally Licensed or Permitted Facilities,” American Bar Association’s *Natural Resources & Environment*, July 27, 2020.
- Co-author, “EPA Proposes Sweeping Changes to Clean Water Act Section 401 Water Quality Regulations,” *Synergy Environmental Inc Environmental Consultants Newsletter*, August 2019.
- Co-author, “Power Development at Non-Powered Dams,” *The Water Report*, May 15, 2019.
- Author, “Déjà Vu All Over Again: Re-Defining Waters of the United States Under the Clean Water Act,” *The Water Project*, January 15, 2019.
- Author, “Deep Carbonization and Hydropower,” *Environmental Law Reporter*, April 2018. (Note: Article excerpted from Michael B. Gerrard & John C. Dernbach, eds., *Legal Pathways to Deep Decarbonization in the United States*, forthcoming in 2019 from ELI Press.)
- Author, “Water Transfers & the CWA,” *The Water Report*, 2017.
- Author, “Opportunities for New FERC Policies Promoting Hydropower Development Under New Administration,” *Irrigation Leader*, Vol. 8 Issue 5, May 1, 2017.
- Author, “Hydropower Licensing Under the Federal Power Act: A Century of Resource Conflict Resolution in the Public Interest,” *Natural Resources & Environment*, ABA, 2016.

Media Commentary

- Quoted, “Pumped Storage Is Having a Moment. Will It Shift Renewables?,” *Energy Wire*, April 15, 2022.
- Quoted, “FERC Hopes to Act Within Months to Ensure Markets Compensate Flexibility: Glick,” *S&P Global Commodity Insights*, April 6, 2022.
- Featured, “Chuck Sensiba on Troutman Pepper’s Expertise in Hydro Law,” *HydroLeader*, May 2021.
- Quoted, “3 Takeaways From The EPA’s New Water Permit Rule,” *Law360*, June 2, 2020.
- Featured, “Alumni Spotlight: Charles R. Sensiba,” The University of Utah, August 15, 2019.
- Quoted, “GRDA lays out proposed studies for relicense - Corps Hydrologist refers to lake operations as ‘nightmare,’” *Miami News Record*, June 12, 2018.
- Mentioned, “People on the Move,” American Bar Association, Section of Environment, Energy, and Resources, *Trend*, May 1, 2018.
- Mentioned, “Transition Roundup: Changes at Kleinschmidt, Troutman Sanders and Van Ness Feldman,” *Hydro Review*, March 23, 2018.
- Mentioned, “Troutman Reels in Hydro Specialist,” *Power Finance & Risk*, March 22, 2018.
- Quoted, “Troutman Nabs Ex-Van Ness Feldman Hydropower Pro,” *Law360*, March 16, 2018.
- Mentioned, “People on the Move,” *Washington Business Journal*, March 15, 2018.

Rankings and Recognition

- Recognized in *The Legal 500 United States* for Industry Focus: Energy Regulation: Conventional Power (2022)
- *Chambers USA*: Energy: Electricity (Regulatory & Litigation), USA - Nationwide (2021-2022)
- *Best Lawyers in America*®: Energy Law (2020-2023) and Environmental Law (2023)

BAR ADMISSIONS

- Alaska
- Colorado (Inactive)
- District of Columbia

COURT ADMISSIONS

- Supreme Court of the United States
- U.S. Court of Appeals, District of Columbia Circuit
- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Eleventh Circuit

EDUCATION

- University of Colorado Law School, J.D., 1999
- The University of Utah, B.S., *cum laude*, 1995

Related Insights

Washington Energy Report 02.15.23

DOE Releases Awaited Draft Guidance for Bipartisan Infrastructure Law Hydropower Incentive

Washington Energy Report 02.15.23

Funding Begins for Hydropower Research and Development and Fish Passage

Washington Energy Report 02.15.23

Hydropower: 2022 Lookback and 2023 Trendspotting

Washington Energy Report 02.15.23

U.S. Court of Appeals for the 9th Circuit Affirms Lower Court's Dismissal of Tribe's Case Against City of Seattle

Environmental Law and Policy Monitor 11.28.22

Fish and Wildlife Service Announces Funding Grants for Fish Passage

Washington Energy Report 10.18.22

DOE Announces \$13.5M Distribution to Hydroelectric Facilities Through the Hydroelectric Production Incentive Program

