



NORSKE  
LAKSEELVER



Norges  
Naturvernforbund  
Friends of the Earth Norway

**EFTA Surveillance Authority**

Re. Case No: 69544

Oslo, 25<sup>th</sup> November 2013

## **ADDITIONAL COMMENTS REGARDING THE WATER RESOURCES ACT SECTIONS 28 AND 66**

With reference to previous correspondence and our last letter dated 11 October 2013 in Case No 69544, the undersigned hereby submit additional information to the ESA regarding the Water Resources Act sections 28 and 66. We would also like to add some comments about prioritisation of revising licenses within the deadlines of the Water Framework Directive.

### **Water Resources Act sections 28 and 66**

In previous correspondence there are dissimilar interpretations of the scope of the Water Resources Act sections 28 and 66. We refer to our letters of 29 June 2012 (point 6 and 7) and 11 October 2013 (point 2.1).

In April 2011, the Norwegian Water Resources and Energy Directorate sent the attached letter (in Norwegian) to the River Basin District Authorities, titled *“Follow up management plans according to the water regulation – regarding the need of revision of terms and use of Water Resource Act §§ 28 and 66”*. This letter explains how the Water Resource and Energy Directorate interprets these legal provisions, and to what extent the provisions will be used as a legal basis by the Directorate in following up the Water Management Plans. As far as we know, this letter from April 2011 is still the last information to the River Basin District Authorities regarding this issue.

Regarding the question of the scope of these provisions, this letter from Norwegian Water Resources and Energy Directorate to the River Basin Authorities is highly relevant. In contrast to the arguments in the Ministry’s letters dated 31 May 2012 and 31 July 2013 to the ESA, the Norwegian Water Resources and Energy Directorate makes it clear that the Directorate does not regard these provisions as applicable legal instruments when carrying

out measures based on the Water Management Plans. The letter emphasises that the provisions can only be used under “special circumstances”. Section 66 can only be used when it comes to “severe environmental problems”. The letter concludes with the following statement: *“A general request that NVE (Norwegian Water Resources and Energy Directorate), as part of the work with following up existing management plans according to the water regulation, have to consider whether these two provisions can be used is not sufficiently concrete”*.

### **Lower priority to environmental improvements in regulated water bodies**

We would also request the Authority to take into account the low prioritisation of administrative capacity when it comes to revising old hydro power licenses.

When the screening report (mentioned in our letter of 11 October 2013 in point 2.4) was published in October 2013, the government emphasised that the report is a prioritisation of *where* to implement environmental conditions, and do not indicate any prioritisation *in time*. The Norwegian Water Resources and Energy Directorate has stated that revising terms in old hydro power licenses will have a low priority in the years to come, because administrative capacity will be prioritised for processing applications for new hydropower projects. If the revision of old licenses is given a lower priority, the environmental objectives in several water bodies will not be achieved within the deadlines of the Water Framework Directive. The revisions of old licenses have always been given a low priority, and in our view the Water Framework Directive now requires *upgraded capacity* to impose new conditions in old licences within the deadlines of the Directive.

In the complainants’ view, the achievement of the environmental objectives in regulated waterways cannot be postponed for the reason that the administration does not prioritise the sufficient capacity required to impose necessary conditions on old hydro power licenses.

For any questions regarding this letter, please contact Tine Larsen (e-mail [tl@lundogco.no](mailto:tl@lundogco.no), phone +47 99 11 99 31) or Stein Erik Stinessen (e-mail [ses@lundogco.no](mailto:ses@lundogco.no), phone +47 99 11 99 12).

### **Best regards**

The Norwegian Association of Municipalities hosting Hydropower Plants (LVK)

The Liaison Committee of Nature Conservation (SRN)

The Union of Outdoor Recreation Organizations (FRIFO)

The Norwegian Biodiversity Network (SABIMA)

Norwegian Salmon Rivers (Norske Lakseelver)