



For Immediate Release

December 20, 2022

Media contacts:

Betsy Nicholas, (202) 423-0504, betsy@waterkeeperschesapeake.org

Ted Evgeniadis, (609) 571-5278, ted@lowsusriverkeeper.org

Zahra Ahmad, (517) 898-0924, zahmad@earthjustice.org

Bethany Ziegler, (443) 789-9253, bziegler@shorerivers.org

D.C. Court of Appeals Vacates Federal License for Conowingo Dam

FERC exceeded its authority when it approved license without certification Maryland issued in 2018

(Silver Spring, MD) Today, the U.S. Court of Appeals for the District of Columbia Circuit [issued an opinion](#) vacating the Federal Energy Regulatory Commission's (FERC) licensing of the Conowingo Dam and remanded it back to FERC. In its decision, the court agreed with Waterkeepers Chesapeake, Lower Susquehanna Riverkeeper, ShoreRivers, and Chesapeake Bay Foundation's argument that FERC exceeded its authority when it approved a 50-year license without including the Water Quality Certification that Maryland issued in 2018.

The Clean Water Act provides that no license or permit under section 401 shall be granted until certification has been obtained or has been waived by a state. The court agreed with us that "Maryland did not fail or refuse to act. Just the opposite. The state *acted* when it issued the 2018 certification." Furthermore, the court stated that FERC cannot issue "a license based on a private settlement arrangement entered into by Maryland after the state had issued a certification with conditions but then changed its mind."

In remanding the license back to FERC, the court again agreed with us that there wouldn't be disruptive consequences, and would allow the "completion of the administrative and judicial review that was interrupted by the settlement agreement." The court emphasized that states are the "prime bulwark in the effort to abate water pollution." The court decision clearly shows that delays could have been avoided if Maryland and other parties involved had followed the law from the beginning.

“We applaud the court's decision and are glad to see that Constellation Energy (formerly Exelon) will be required to pay their fair share for the harm that their dam operations have caused to the Susquehanna River and downstream communities,” said **Betsy Nicholas, Executive Director Waterkeepers Chesapeake**. “This decision will not only protect the Susquehanna River and the Chesapeake Bay for the next 50 years of this license term, but will also ensure that all water quality certifications for large projects can't just be thrown out when it is politically expedient or when the state is pressured to do so. This is a big win for the Chesapeake Bay, watermen, downstream residents, and the entire Chesapeake Bay cleanup plan.”

“Vacating the unlawful 50-year license for Conowingo Dam which was conspired by the dam's owner Constellation Energy and Maryland Department of the Environment sets national precedent in protecting our communities and upholding the statutes of the Clean Water Act,” said **Ted Evgeniadis, Lower Susquehanna Riverkeeper**. “The Susquehanna River, Chesapeake Bay, and all users of these waters felt great relief today by the court's decision. Constellation must be held accountable to help protect this critical estuary. If they would like to produce profits from the Susquehanna River, they must accept the fact they play a huge role in protecting downstream communities and must pay to protect water quality, migratory fish species, and recreational uses. Our challenge and court ruling sets the record straight in that large corporations do not get a free pass and are held accountable to the law as written.”

“ShoreRivers applauds the court's decision to vacate this license and protect our local communities and their fundamental right to clean water. The Eastern Shore bears the brunt of the pollution that flows through the Conowingo Dam, creating navigational hazards, shorelines choked with debris, and oyster bars and underwater grass beds smothered with sediment,” said **Sassafras Riverkeeper Zack Kelleher from ShoreRivers**. “We're happy that the right decision was made in this case for our maritime communities and economy, and to protect all of the restoration work that Marylanders have worked so hard to implement. Today's decision is a major win for our watermen, boaters, community members, and everyone who works, recreates, and enjoys our Eastern Shore waterways and the Chesapeake Bay.”

“Today's decision makes clear that project owners and states can't do an end-run around Clean Water Act provisions that Congress put in place to protect the nation's waters and the public interest,” said **James Pew, a senior Earthjustice attorney** who represented the groups in litigation. “Water quality certifications have to include all the requirements that are necessary to protect a state's waters and they can't be abandoned or altered in private backroom deals.”

Maryland's 2018 certification identified the minimum steps necessary for the dam operations to protect the water quality of the Lower Susquehanna River and the Chesapeake Bay, including reducing the amount of nitrogen and phosphorus flowing from the dam, ensuring fish and eel passage, improving the dam's flow regime to protect downstream habitats, controlling trash and debris, providing for monitoring and undertaking other measures. Maryland can go forward with the current certification or go through the process to create a new one. The inclusion of the

certification water quality protections in the dam's license will accelerate progress on the Chesapeake Bay cleanup plan (TMDL).

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Waterkeepers Chesapeake fights for clean water and a healthy environment by supporting Waterkeepers throughout the Chesapeake and coastal regions as they protect their communities, rivers, and streams from pollution. www.waterkeeperschesapeake.org

Lower Susquehanna Riverkeeper Association is a 501(c)3 non-profit licensed Waterkeeper® organization dedicated to protecting and improving the ecological health of the Lower Susquehanna River Watershed and the Chesapeake Bay. The Lower Susquehanna Riverkeeper patrols the river for illegal pollution, and when necessary, enforces environmental laws to protect the river and communities that depend on it. www.lowersusquehannariverkeeper.org

ShoreRivers protects and restores Eastern Shore waterways through science-based advocacy, restoration, and education. It is the home of the Sassafras, Chester, Miles-Wye and Choptank Riverkeepers. <https://www.shorerivers.org>

Earthjustice is the premier nonprofit environmental law organization. We wield the power of law and the strength of partnership to protect people's health, to preserve magnificent places and wildlife, to advance clean energy, and to combat climate change. We are here because the earth needs a good lawyer. <https://earthjustice.org/>