



Oregon

Kate Brown, Governor

Department of Environmental Quality
Eastern Region Bend Office
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September 9, 2020

VIA EMAIL, CERTIFIED MAIL, and U.S. FIRST CLASS MAIL

Nicholas E. Josten
GeoSense
2742 St. Charles Ave.
Idaho Falls, ID 83404

Re: Rock Creek Hydroelectric Project, FERC Project P-12726
Certification Pursuant to Section 401 of the Federal Clean Water Act

Dear Mr. Josten:

Warm Springs Hydro, LLC proposes to license the hydroelectric generating Project located on Rock Creek near Haines, Oregon. Warm Spring Hydro's application for a license is pending with the Federal Energy Regulatory Commission (FERC).

On December 23, 2019, the Oregon Department of Environmental Quality (DEQ) received an application for a water quality certification pursuant to Section 401 of the Clean Water Act. DEQ's evaluation of the proposed actions was conducted pursuant to Section 401 of the Clean Water Act, 33 USC §1341, ORS 468B.035 through 468B.047, and DEQ's certification rules found in Oregon Administrative Rules 340, Division 048. To certify the Project, DEQ must have reasonable assurance that the proposed activities will be conducted in a manner that will not violate the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, and Oregon water quality standards in Oregon Administrative Rules 340, Division 041, adopted to implement these sections.

After consideration of public comment and effective as of the date of this letter, DEQ approves Warm Springs Hydro's request for water quality certification, as conditioned in the attached certification decision, and for the reasons specified in the associated Evaluation and Findings Report.

The Section 401 certification is valid for Warm Springs Hydro, LLC only and is not transferable without written approval from DEQ, OAR 340-048-0042(6).

In accordance with OAR 340-048-0045(2), Warm Springs Hydro, LLC may request a contested case hearing to be conducted in accordance with the Oregon Administrative Procedures Act (Oregon Revised Statute, chapter 183 and OAR 137-003-0501 to -0700) if dissatisfied with the certification decision, including any conditions to the approved certification. Such a request must be made in writing and comply with OAR 340-011-0530(2) and OAR 340-048-0045(2). The request for hearing must be mailed to and received by the Department of Environmental Quality within 20 days of the date of mailing (set forth above):

Oregon Department of Environmental Quality
Attn: Marilyn Fonseca
700 NE Multnomah Street
Suite 600
Portland, OR 97232

If a written request for hearing is not received within the 20-day period, your right to a hearing shall be considered waived. If a timely request for hearing is received by the Department, you will be notified of the time and place of the hearing and provided information on the procedures by which contested cases are heard, your rights, the import and effect of such a hearing, and your rights and remedies. As a corporation, you must be represented by legal counsel at this hearing, if any. In accordance with OAR 340-048-0045(3), this certification decision is effective upon the issuance of this decision, notwithstanding a request for a contested case hearing or other judicial review, if any.

Sincerely,

Lauri Aunan

Lauri Aunan
Interim Eastern Region Administrator

Attachment: Clean Water Act Section 401 Conditions

Enclosures: Evaluation and Findings Report

Ec: Marilyn Fonseca, DEQ, HQ
John Dadoly, DEQ, ER Pendleton
Mary Grainey, OWRD
Ken Homolka, ODFW
Elizabeth Osier Moats, ODFW
Anika Marriott, ODOJ

Signature: *Lauri Aunan*
Lauri Aunan (Sep 9, 2020 12:01 PDT)

Email: aunan.g.lauri@deq.state.or.us

NOTICE TO ACTIVE DUTY SERVICEMEMBERS

Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through: <http://legalassistance.law.af.mil/content/locator.php>. The Oregon Military Department does not have a toll free telephone number.