

**Federal Clean Water Act §401
Certification Conditions
for
PacifiCorp Energy's
PROSPECT Nos. 1, 2 and 4 HYDROELECTRIC PROJECT
FERC No. 2630
Upper Rogue River Subbasin
Jackson County, Oregon
March 2007**

No later than thirty days following the Federal Energy Regulatory Commission (FERC) issuance of a new license (License) for the Prospect Hydroelectric Project Nos. 1, 2 and 4 (Project), PacifiCorp Energy must comply with the following §401 Certification Conditions except when a different date is specified in the condition:

1. Operation

a. PacifiCorp Energy may not divert water such that flows at the upstream end of the following Project bypass reaches are less than the specified minimum in-stream flow levels measured in cubic feet per second (CFS):

Project Bypass Reach	Minimum Flow, CFS	Time Period
Middle Fork Rogue River	90	April 1 – July 31
	70	August 1 – October 31
	40	November 1 - March 31
South Fork Rogue River	120	April 1 - July 31
	200	August 1 – October 31
	60	November 1 – March 31
Red Blanket Creek	30	April 1 – October 31
	20	November 1 - March 31
Rogue River	50	December 1 – June 30
	85	July 1 - November 30

The minimum flow requirement for the South Fork Rogue River downstream of the confluence with the Middle Fork Rogue River is to be attained by the instream flow requirements for Red Blanket Creek and the Middle Fork Rogue River combined

with groundwater accretion and tributary flows. PacifiCorp Energy will be deemed to be in compliance with minimum instream flow requirements for the South Fork Rogue River below the confluence with the Middle Fork Rogue River if PacifiCorp Energy complies with minimum instream flow requirements for the Middle Fork Rogue River and Red Blanket Creek.

b. PacifiCorp Energy must limit Project-induced ramping of river stage as follows:

Project Reach	May 1 – September 30	October 1- April 30
Middle Fork Rogue River	Target of 1 inch per hour, not to exceed 2 inches per hour	Target of 2 inches per hour, not to exceed 3 inches per hour
Red Blanket Creek	Target of 1 inch per hour, not to exceed 2 inches per hour	Target of 2 inches per hour, not to exceed 3 inches per hour
North Fork bypassed reach	The target ramp rate is 100 CFS increase or decrease per 30 minutes, not to exceed 130 CFS per 30 minute interval.	
Rogue River below Powerhouse # 2	The target ramp rate is 100 CFS increase or decrease per 30 minutes, not to exceed 130 CFS per 30 minute interval.	

The above ramping limits do not apply to changes in river flows due to natural increases or decreases, unplanned outages, or emergency situations involving public safety or protection of project developments.

At the request of PacifiCorp Energy or on the initiative of ODEQ, the ramping limits in this Certification Condition may be modified upon written approval by ODEQ.

c. PacifiCorp Energy must limit scheduled maintenance that necessitates ramping in bypass reaches to the time period between August 1 – September 30 unless otherwise agreed to in writing by ODEQ.

d. During ground-disturbing activities or instream work, PacifiCorp Energy shall implement all required Best Management Practices to protect surface water and beneficial uses from adverse Project-related water quality effects including but not limited to preventing excessive sediment and turbidity, shall comply with state and federal permitting requirements, and shall comply with state and federal emergency notification requirements.

2. Monitoring

a. Turbidity. During the first occasion that scheduled project maintenance necessitates ramping in the Middle Fork Rogue River bypass reach, PacifiCorp Energy must measure turbidity in the Middle Fork Rogue River above the Middle Fork diversion and at a point upstream of the mouth of Red Blanket Creek. After review of the initial data set or for other reasons, ODEQ may require additional turbidity measurements during scheduled project maintenance upon written notice from ODEQ.

b. Dissolved Oxygen. PacifiCorp Energy must measure dissolved oxygen (DO) levels in Red Blanket Creek for a minimum of 72 consecutive hours (hourly readings) during June 1 – 15 and July.

PacifiCorp Energy shall collect data for three consecutive years commencing with the first full calendar year following License issuance. ODEQ may extend the monitoring to additional year(s) based on its need to further evaluate attenuation of Project effects on DO, or add, amend, or delete monitoring locations or times.

c. Temperature. PacifiCorp Energy must measure instream temperature in Red Blanket Creek from June-to-August as follows:

(1) Location: Red Blanket Creek Bypass Reach at sites above and below the diversion dam and above Red Blanket Creek falls.

(2) Frequency: Monitoring must start in the first full calendar year of the License and be repeated once more in years 3, 4, or 5 of the License.

(3) The frequency and location of monitoring may be modified by written notice from ODEQ.

d. Flow and River Stage. PacifiCorp Energy must measure stream flow and river stage as follows:

(1) Measure flow and river stage, at no more than 15 minute intervals, in the Rogue River, Middle Fork Rogue River and Red Blanket Creek bypass reaches as near to diversions as is practicable, and in the South Fork Rogue River below the confluence with the Middle Fork Rogue River.

(2) Measure flow in the Prospect no. 2 penstocks using generator-based output.

(3) Stream flow and river stage monitoring shall be conducted in accordance with a Flow Monitoring Plan approved by ODEQ.

e. Septic Tanks. At the time of removal of accumulated sludge from the septic tank at each on-site system, PacifiCorp Energy must check that the leach field is operating correctly and that there are no discernable areas of surfacing sewage.

f. In undertaking monitoring required by this Certification, PacifiCorp Energy must exercise reasonable care in the selection, installation, calibration, maintenance, and use of monitoring devices. Providing such care is exercised, PacifiCorp Energy will not be responsible for missing or inaccurate monitoring data. ODEQ, however, may require PacifiCorp Energy to undertake additional monitoring reasonably necessary to address either missing or inaccurate data.

g. Water quality monitoring must follow an ODEQ-approved QA/QC plan and meet Level A data quality in accordance with the ODEQ *Mode of Operations Manual*, as updated.

h. Test methods used to comply with Certification Condition 2 must be in accordance with the *Standard Methods for Examination of Water and Wastewater*, as updated, or as otherwise approved by ODEQ.

3. Management Plans and Consultation Requirements

a. Flow Monitoring Plan. Within six months of License issuance, PacifiCorp Energy shall develop a proposed Flow Monitoring Plan in consultation with the Oregon Department of Fish and Wildlife (ODFW), Oregon Department of Water Resources (OWRD), and ODEQ and submit the plan to ODEQ for approval. Following ODEQ approval, PacifiCorp Energy shall implement the plan in accordance with the plan's schedule and specifications.

The Flow Monitoring Plan may be revised and updated, subject to consultation with ODFW, OWRD and ODEQ, and with approval of ODEQ, as necessary to address personnel safety, advances in flow measurement technology, or other reasons.

b. PacifiCorp Energy must consult with ODEQ at least 60 days in advance of activities related to the implementation of protection, mitigation, and enhancement measures that may cause potential short-term increases in turbidity or increased erosion.

4. Repair and Maintenance

PacifiCorp Energy must allow 60 days for ODEQ review and approval before undertaking Project repair or maintenance activities that might significantly affect water quality. The exceptions to this requirement are repair or maintenance activities required by or contemplated in this Certification, and repair or maintenance activities that must occur in less than 60 days in order to protect public safety, project facilities, or the environment. In the later event, PacifiCorp Energy must notify ODEQ of potential adverse effects on water quality and the practicable measures being employed to limit effects on water quality and beneficial uses. ODEQ may, at PacifiCorp Energy's request, pre-approve specified repair and maintenance activities that will occur on a periodic or ongoing basis.

5. Adaptive Management

a. In the event the Red Blanket Creek bypass reach stream monitoring required under this Certification shows that water column dissolved oxygen levels are below 9.0 mg/l during June 1-15 or below 8.0 mg/L during June 16-July 31, and the Project reduces the dissolved oxygen by 0.1 mg/l or more, ODEQ may require additional feasible measures to be implemented by PacifiCorp Energy to avoid the violations, including but not limited to increasing minimum stream flows.

b. ODEQ may propose modification of the §401 certification in accordance with OAR 340-048-0050 and Certification Condition 10, below, to apply the spawning DO criterion beyond June 15 on a site-specific basis. The modified conditions may include, if appropriate, requirements to propose and implement studies, with ODEQ approval, to determine the Project's compliance with a change in the period of application of the spawning DO criterion and to implement additional feasible measures necessary to comply with the changed period.

c. In the event surface water temperature monitoring shows exceedences of the temperature criteria and the Project contribution to the warming is 0.3°C or more, ODEQ may require PacifiCorp Energy to develop and implement a temperature

management plan to achieve compliance with the applicable temperature criteria or an applicable TMDL load allocation.

6. Recordkeeping and Reporting

- a. PacifiCorp Energy must report stream flows and river stage to ODEQ for each water year (October 1 – September 30) in accordance with the approved Flow Monitoring Plan.
- b. PacifiCorp Energy must report DO and stream temperature data to ODEQ by December 31 of the year the data were collected.
- c. PacifiCorp Energy shall compile and report turbidity data to ODEQ within 60 days after testing is completed.
- d. PacifiCorp Energy must maintain written records of on-site sewage system septic tank pumping and visual observations of the operation and function of the leach field and other parts of the on-site system at the time of pumping.
- e. In the event of a spill or release or threatened spill or release to state waters of petroleum products or hazardous substances at or above reportable quantities as specified in applicable federal and state regulations, PacifiCorp Energy must immediately implement the site-specific emergency contingency plan, comply with Oregon Revised Statute Chapters 466 and 468, and notify the Oregon Emergency Response System (OERS) at 1-800-452-0311.
- f. In the event of a canal or flume failure, or other erosive event resulting in uncontrolled and catastrophic release of diverted water, PacifiCorp Energy must notify OERS as soon as reasonably practicable but in no circumstance later than the next day.
- g. PacifiCorp Energy must retain records for the duration of the License of instances where the Environmental Management System Plan is modified or implemented. Records must include correspondence and reports of remediation activities and the results of the clean-up efforts or resource damage, if any.

7. Access

PacifiCorp Energy must allow ODEQ access at reasonable times to inspect the Project area and Project records as is necessary to verify compliance with these Certification Conditions.

8. Project Changes

PacifiCorp Energy must obtain ODEQ review and approval before undertaking any change to the Project that might significantly affect water quality (other than project changes required by or contemplated in this Certification), including but not limited to changes to Project structures, operations, and minimum flows.

9. Project-Specific Fee

In accordance with ORS 543.080, PacifiCorp Energy must pay a project-specific fee for ODEQ's costs of overseeing implementation of this Certification per this schedule:

FERC License	Amount of Fee (subject to adjustment, below)
30 days after Issuance	\$16,000
First License Anniversary	\$ 22,000
Second License Anniversary	\$ 11,000
Third License Anniversary	\$ 12,000
Fourth License Anniversary	\$ 9,000
Fifth License Anniversary	\$ 8,000
Sixth License Anniversary	\$ 9,000

The fee is payable to the "State of Oregon, Department of Environmental Quality.

PacifiCorp Energy shall adjust the site-specific fee identified in this condition according to the following formula:

$$AD = D \times (CPI-U)/(CPI-U-June 2007)$$

WHERE:

AD = Adjusted dollar amount payable to ODEQ.

D = Dollar amount prior to adjustment.

CPI-U = the most current published version of the Consumer Price Index-Urban (U.S. All items, 1982-84=100 - CUUR0000SA0). The CPI-U is published monthly by the Bureau of Labor Statistics of the federal Department of Labor. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted by written agreement between ODEQ and PacifiCorp Energy.

ODEQ will credit against this amount any fee or other compensation paid or payable to ODEQ, directly or through other agencies of the State of Oregon, during the preceding year (July 1 to June 30) for ODEQ's costs of oversight.

ODEQ may review with PacifiCorp Energy the need, if any, to modify, extend, or terminate the fee, in accordance with ORS 543.080. PacifiCorp Energy must pay any Project-specific fee required after such review.

10. §401 Certification Modification

a. ODEQ, in accordance with OAR Chapter 340, Division 048, and, as applicable, 33 USC §1341, may modify this Certification to add, delete, or modify Certification Conditions as necessary and feasible to address:

- (1) Adverse or potentially adverse Project effects on water quality or designated beneficial uses that did not exist or were not reasonably apparent when this Certification was issued;

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- (2) TMDLs (not specifically addressed in these Certification Conditions);
 - (3) Changes in water quality standards or beneficial uses;
 - (4) Any failure of Certification Conditions to protect water quality or designated beneficial uses as expected when the Certification was issued; or
 - (5) Any change in the Project or its operations that was not contemplated by this Certification that might adversely affect water quality or designated beneficial uses.

b. In accordance with 33 USC §1341, any added or modified condition shall, so long as it is in effect, become a condition of any federal license or permit that is thereafter issued for the Project. ODEQ may seek, in accordance with applicable law and procedures, to have any new or modified Certification Condition incorporated into any existing federal license or permit for the Project.

11. Posting of §401 Certification

PacifiCorp Energy must post a copy of these Certification Conditions in a prominent location at the Project facility.