

Clean Water Act § 401 Certification Conditions

For the Prospect 3 Hydroelectric Project

(FERC No. P-2337)

Rogue River Basin

Jackson County, Oregon

February 2020

Upon Federal Energy Regulatory Commission (FERC) issuance of a license for the Prospect 3 Hydroelectric Project (Project), PacifiCorp must comply with the following § 401 Certification conditions:

I. Project Operation

- a. Throughout the life of the FERC license, PacifiCorp must continue to run the Prospect 3 hydroelectric Project in “run-of-river” mode with a maximum diversion of 150 cubic feet per second from the South Fork Rogue River. In accordance with applicable law, PacifiCorp shall notify DEQ if FERC authorizes modification to these operations so as to allow DEQ to determine whether such changes may affect compliance with water quality standards.

II. Dissolved Oxygen

- a. Within 90 days of FERC License issuance, PacifiCorp shall submit a Dissolved Oxygen Monitoring Plan to DEQ, which addresses the dissolved oxygen monitoring and reporting requirements presented below. Upon DEQ approval, PacifiCorp shall submit to FERC this Monitoring Plan as part of the required § 401 Certification Conditions for the Project for the purposes of any federal license or permit.
- b. At a minimum the dissolved oxygen monitoring plan shall contain the following:
 - i. Identification of monitoring locations. PacifiCorp shall monitor at locations that are representative of dissolved oxygen levels in the South Fork Rogue River above and below the diversion dam.
 - ii. PacifiCorp shall measure dissolved oxygen, percent saturation, temperature and flow in the Project at monitoring locations in the South Fork Rogue River above and below the diversion dam. Dissolved oxygen shall be measured continuously at a minimum interval of one hour from April 1 through July 31 of the first project year of new project operations.
 - iii. The Dissolved Oxygen Monitoring Plan shall describe the equipment, calibration procedures, monitoring methods, monitoring locations, and frequency of monitoring necessary to quantify the effects of project operations on dissolved oxygen.

- c. PacifiCorp shall implement the Dissolved Oxygen Monitoring Plan in accordance with DEQ's approval.
- d. Dissolved Oxygen Reporting:
 - i. Subject to this section II.e.ii, PacifiCorp shall submit annual water quality monitoring reports to DEQ by January 31 of each year. Each report shall include an analysis of dissolved oxygen monitoring data from each station including graphical representation of daily minimum, maximum, and average temperature measurements. To evaluate dissolved oxygen data with the applicable criteria given in Table 21 of OAR 340-041-0016, PacifiCorp shall also present data as 7-day mean minimum (7D).
- e. Dissolved Oxygen Adaptive Management Plan:
 - i. If DEQ determines monitoring indicates the project is causing or contributing to a violation of the dissolved oxygen criteria, PacifiCorp shall develop and propose measures to address the dissolved oxygen deficit as part of an adaptive management plan. PacifiCorp shall develop and submit to DEQ an adaptive management plan to ensure that project does not cause or contribute to a violation of the dissolved oxygen criteria. Following DEQ approval, PacifiCorp shall implement the plan in accordance with DEQ's approval.
 - ii. If DEQ determines monitoring demonstrates that the project does not cause or contribute to a violation of dissolved oxygen criteria, then DEQ may allow PacifiCorp to cease monitoring for a period of time or for the remaining term of the license.

III. Total Dissolved Gas

- a. Following FERC License issuance, PacifiCorp shall submit annual water quality monitoring reports to DEQ by January 31 of each year summarizing the frequency of spill events to Daniels Creek. Following DEQ review of the annual report, DEQ may request PacifiCorp meet with DEQ to discuss the spill events.
- b. Following the meeting, if requested by DEQ, PacifiCorp shall submit a Total Dissolved Gas Monitoring Plan to DEQ, which addresses the total dissolved gas monitoring and reporting requirements presented below. Upon DEQ approval, PacifiCorp shall submit to FERC this Monitoring Plan as part of the required § 401 Certification Conditions for the Project for the purposes of any federal license or permit. At a minimum PacifiCorp shall measure total dissolved gas in Daniels Creek and Middle Fork Rogue River during an overflow or other non-routine discharge of diverted flows via the forebay and tailrace spillways to Daniels Creek and the Middle Fork Rogue River.
- c. The monitoring plan shall include the following minimum components:
 - i. Proposed data collection procedures including description of equipment and methods.
 - ii. Identification of monitoring locations.
 - iii. Proposed evaluation procedures.

- d. PacifiCorp shall implement the Total Dissolved Gas Monitoring Plan in accordance with DEQ's approval.
- e. Total Dissolved Gas Reporting:
 - i. Subject to this section III.f.ii, PacifiCorp shall submit annual water quality monitoring reports to DEQ by January 31 of each year.
- f. Total Dissolved Gas Adaptive Management Plan:
 - i. If DEQ determines monitoring indicates the total dissolved gas criteria are not met, PacifiCorp shall develop and propose measures to address the total dissolved gas criteria exceedance as part of an adaptive management plan. PacifiCorp shall develop and submit to DEQ an adaptive management plan to ensure that project does not cause or contribute to a violation of the total dissolved gas criteria. Following DEQ approval, PacifiCorp shall implement the plan in accordance with DEQ's approval.
 - ii. If DEQ determines monitoring demonstrates that the total dissolved gas criteria are met, then DEQ may allow PacifiCorp to cease monitoring for a period of time or for the remaining term of the license.

IV. Biological Criteria; Statewide Narrative Criteria; Protection of Designated Beneficial Uses; Antidegradation; Compliance with Other Appropriate Requirements of State Law

- a. Within 180 days of FERC License issuance, PacifiCorp shall submit a Macroinvertebrate Monitoring Plan to DEQ that addresses the macroinvertebrate monitoring and reporting requirements presented below. Upon DEQ approval, PacifiCorp shall submit to FERC this Monitoring Plan as part of the required § 401 Certification Conditions for the Project for the purposes of any federal license or permit. At a minimum, PacifiCorp shall include the following components in the monitoring plan:
 - i. A description of an appropriate sampling technique for macroinvertebrate monitoring below the diversion dam, which shall include standard bioassessment metrics including densities, abundance, richness and tolerance.
 - ii. Identification of monitoring locations below the diversion dam, which shall include, at a minimum, two sampling locations in the South Fork Rouge River between the diversion dam release point and river mile 7.
 - iii. Identification of the frequency of macroinvertebrate monitoring below the diversion dam, which shall include proposed sampling from mid to late summer.
- b. PacifiCorp shall implement the Macroinvertebrate Monitoring Plan in accordance with DEQ's approval.
- c. Macroinvertebrate Reporting:
 - i. Subject to this section IV.d.ii, PacifiCorp shall submit annual monitoring reports to DEQ by January 31 of each year.
- d. Macroinvertebrate Adaptive Management Plan:

V. **General Conditions:**

- a. **Implementation:** PacifiCorp must provide DEQ evidence that PacifiCorp has received all required permits and approvals before Project construction activities commence.
- b. **§ 401 Certification Modification:** Without limiting DEQ's discretion to take other actions in accordance with 33 USC 1341, DEQ may modify the Certification to add, delete, or modify Certification conditions as authorized by OAR 340-048-0050.
- c. **Project Changes.** PacifiCorp shall notify DEQ of any change in ownership, scope, or operation of the Project. PacifiCorp shall obtain DEQ's review and approval before undertaking any such change to the Project, including but not limited to changes to Project structures, construction, operations, and flows, which, among other changes, may potentially affect water quality.
- d. **Project Repair or Maintenance.** PacifiCorp shall obtain DEQ's review and approval before undertaking Project repair or maintenance activities that may potentially affect water quality (other than repair or maintenance activities authorized by the new FERC license). DEQ may, at PacifiCorp's request, approve specified repair and maintenance activities on a periodic or ongoing basis.
- e. **Project Inspection.** PacifiCorp shall allow DEQ such access as necessary to inspect the Project area and Project records required by this Certification at reasonable times as necessary to monitor compliance with § 401 Certification conditions.
- f. **Posting of § 401 Certification.** PacifiCorp shall post a copy of these Certification conditions in prominent locations at the Project Powerhouse.
- g. **Water Quality Standards Compliance.** Notwithstanding the conditions of this Certification, no wastes shall be discharged and no activities shall be conducted which will violate state water quality standards.
- h. **Conflict Between Certification Conditions and Application.** To the extent that there are any conflicts between the terms and conditions in this Certification and how activities, obligations, and processes are described in the Application, the terms and conditions in this Certification, as interpreted by DEQ, shall control.
- i. **Project Specific Fee.** PacifiCorp shall pay the project-specific fee as required by applicable law and in the manner and amount as particularly described in Exhibit A, which is incorporated here in its entirety by this reference.

EXHIBIT A

Project-Specific Fees: In accordance with ORS 543.080, PacifiCorp must pay a Project-specific fee for DEQ's costs of overseeing implementation of the conditions of this Certification as follows:

Project-Specific Fee

To implement the conditions of this Certification, PacifiCorp must pay project-specific fees of \$5,000 during each of the first five (5) years beginning July 1 of each year following issuance of a FERC License in 2018 dollars adjusted according to the formula below, made payable to State of Oregon, Department of Environmental Quality.

Adjustment

Fee amounts must be adjusted annually, according to the following formula:

$$AD = D \times (CPI-U)/(CPI-U\text{-November 2018})$$

Where:

AD = Adjusted dollar amount payable to agency.

D = Dollar amount pursuant to Project Specific Fee above,

CPI-U = The most current published version of the Consumer Price Index-Urban. The CPI-U is published monthly by the Bureau of Labor Statistics of the U.S. 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 DEQ and PacifiCorp.

Payment Schedule

Fees must be paid pursuant to a written invoice from DEQ. Except as provided below, project-specific fees will be due on July 1 of each year following issuance of a FERC License. PacifiCorp must pay an initial prorated payment to DEQ within thirty (30) days of license issuance, for the period from the date of license issuance to the first June 30 which follows license issuance.

Credits

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

Expenditure Summary

DEQ shall, on a biennial basis, provide PacifiCorp with a summary of project-specific expenditures.

Duration

PacifiCorp will pay a Project-specific fee following FERC license issuance and for five (5) years after the first July 1 following FERC license issuance, unless DEQ terminates it earlier because oversight is no longer necessary. One year before the expiration of the fee, or earlier if mutually agreed, DEQ and PacifiCorp shall review the need, if any, to modify, extend, or terminate the fee, in accordance with ORS 543.080. PacifiCorp must pay any project-specific fee required after such review as provided in ORS 543.080.