Pending and Anticipated Water Quality Certification Applications for Hydropower Projects

January 2016

Contacts: Mark Bergeron, Director
Bureau of Land Resources
Phone: (207) 215-4397

Kathy Howatt, Hydropower Coordinator
Phone: (207) 446-2642
I. Executive Summary

The Maine Department of Environmental Protection (Department) is submitting this report to the Joint Standing Committee on the Environment and Natural Resources pursuant to 38 M.R.S.A. § 638 (Public Law 2013, Chapter 545). This statute requires the Department to list the applications pending for hydropower water quality certification (WQC), and for applications anticipated to be submitted to the Department in the next five years.

The Department is currently reviewing one WQC application for the following hydropower relicensing project:

- Brassua

During calendar year 2015, the Department issued one WQC for the Vanceboro project on September 24, 2015.¹

The Department anticipates receiving seventeen WQC applications for FERC relicensing in the next five years for the following hydropower projects. The dates listed in parentheses are the anticipated dates for receiving a WQC application:

- Williams – (2016)
- West Buxton – (2016)
- Mattaceunk – (2016)
- Ellsworth – (2017)
- Lower Barker – (2017)
- Goose River – (2018)
- Pennamaquan (tidal project) – (2018)
- Shawmut – (2019)
- Rollinsford – (2019)
- Somersworth – (2019)
- Squa Pan – (2019)
- Cobscook Bay Tidal Energy (tidal project) – 2020

¹ FERC has stated that the WQC deadline for the Vanceboro project was September 17, 2015. The Department disagrees with this date and has determined the appropriate deadline date was October 1, 2015. A letter was sent to FERC on September 24, 2015 stating the Department's position, with no reply yet from FERC.
II. Summary of FERC Relicensing Process

In Maine, there are 137 hydropower dams and one canal system administered through 102 federal licenses authorized by the Federal Energy Regulatory Commission (FERC). According to Section 401 of the federal Clean Water Act, a federal license may not be issued for a hydropower project unless the state water quality certifying agency has either issued a water quality certification (WQC) for the project or has waived certification. This process affords the states and authorized tribes an opportunity to address the aquatic resource impacts of federally-issued permits and licenses. By Executive Order of the governor of the State of Maine, the Department is the State certifying agency for hydropower projects located wholly, or in part, in organized towns and cities as well as all water quality certifications, regardless of location. Section 401 provides up to one year for states to issue decisions on WQC applications.

In Public Law 2013, Chapter 545, the Legislature required the Department to submit an annual report on the status of pending WQC applications with the Department, and a list of the relicensing projects anticipated to be submitted to the Department in the next five years. The language of the statutory text is found in 38 M.R.S.A. § 638 and states:

“By January 15, 2015, and annually thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report describing all pending applications for water quality certification under Section 401 of the federal Clean Water Act for dams located in the State that are subject to the jurisdiction of the Federal Energy Regulatory Commission. The report submitted under this section must include, for each pending application, the filing date of the application, the respective response deadline for the department and a short statement describing the department’s plan to address that deadline. The report must also include a list of the licensing or relicensing deadlines for the dams described in this section that are anticipated to occur within 5 years after the date of the report and, if applicable, the department’s plan to address each deadline.”
III. Summary of Hydropower Projects Due for Relicensing in 2016-2020

The Department currently is reviewing one WQC application for a hydropower project, listed below, with a brief statement of steps the Department is taking to achieve the WQC deadline. Additional project details can be found in Appendix A.

- Brassua – The applicant voluntarily withdrew and resubmitted their WQC application with the Department. The new WQC deadline for a Department decision is November 15, 2016. The Department will be meeting in January 2016 with the applicant to discuss permitting issues on this application. The Department has also established an internal schedule for WQC review with a goal date of October 14, 2016 for issuing a decision on the WQC application.

The Department maintains a number of steps to improve the internal permitting process for hydropower WQC applications, including:

- Maintenance of a shared calendar in Microsoft Outlook identifying WQC milestones and statutory deadlines
- Creation of project-specific milestones and timelines for each WQC application, with a goal date of issuing a decision on each WQC application 30 days prior to the statutory date
- Increased communication and coordination among Department staff involved in the review of WQC applications

The Department anticipates receiving seventeen WQC applications for FERC relicensing in the next five years for the following hydropower projects. The dates listed in parentheses are the anticipated dates for receiving a WQC application:

- Williams – (2016)
- West Buxton – (2016)
- Mattaceunk – (2016)
- Ellsworth – (2017)
- Lower Barker – (2017)
- Goose River – (2018)
- Pennamaquan (tidal project) – (2018)
- Shawmut – (2019)
- Rollinsford – (2019)
- Somersworth – (2019)
• Squa Pan – (2019)
• Cobscook Bay Tidal Energy (tidal project) – 2020
• Lower Great Falls – (2020)
• Lower Mousam River – (2020)
• Pejepscot – (2020)
• Hiram – (2020)

The Department will follow the application review process currently in place for WQC applications, and will include any process improvements developed in the future.

Appendix A includes a spreadsheet listing all pending and anticipated WQC applications within the next five years, including a brief description of the steps the Department is taking to achieve the WQC deadlines.
APPENDIX A: Pending and Anticipated WQC Applications
### Hydropower Licensing Actions Completed in 2015

<table>
<thead>
<tr>
<th>FERC License Expiration Date</th>
<th>FERC #</th>
<th>Project / Dam</th>
<th>Subordinate Dams</th>
<th>WQC Application Filing Date</th>
<th>Department WQC Deadline</th>
<th>Licensing Action Completed</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 1, 2045</td>
<td>2984</td>
<td>Eel Weir Dam</td>
<td></td>
<td></td>
<td>2043</td>
<td>2044</td>
<td>FERC license issued 3/23/2015. DEP issued WQC on 8/30/2011, which was upheld in BEP and Superior Court challenges. The new FERC license was issued on March 23, 2015.</td>
</tr>
<tr>
<td>November 1, 2045</td>
<td>2660</td>
<td>Forest City</td>
<td></td>
<td></td>
<td>2043</td>
<td>2044</td>
<td>FERC license issued 11/23/2015. WQC waived 3/2/2013. DEP submitted comments to FERC on 8/19/2013 regarding operating conditions to ensure continued attainment of Maine’s water quality standards. The new FERC license was issued on November 23, 2015. FERC included eight of the ten DEP recommendations. DEP recommendations related to water levels and minimum downstream flows were included in the new FERC license; not included were target fall drawdowns to protect some lake trout spawning habitat (FERC determined that sufficient lake trout habitat is present which is unaffected by drawdowns), and dam inspections (the fishway is located in Canada and so is outside of FERC jurisdiction).</td>
</tr>
</tbody>
</table>

### Pending Hydropower Water Quality Certification Applications (As of 12/31/15)

<table>
<thead>
<tr>
<th>FERC License Expiration Date</th>
<th>FERC #</th>
<th>Project / Dam</th>
<th>Subordinate Dams</th>
<th>WQC Application Filing Date</th>
<th>Department WQC Deadline</th>
<th>Anticipated FERC relicense date</th>
<th>Steps to Achieve WQC Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 29, 2000</td>
<td>2618</td>
<td>West Branch *</td>
<td>West Grand Lake Dam, Sykladobis Dam, Farm Cove Dam</td>
<td>March 2, 2012</td>
<td>March 1, 2013</td>
<td>2016</td>
<td>WQC waived on 3/2/2013, but DEP contacts FERC periodically to have DEP comments incorporated into FERC license. DEP submitted comments to FERC on 8/19/2013 for operating conditions to ensure continued attainment of Maine’s water quality standards. FERC Environmental Assessment is under review. Maine DIFW and USFWS requested an extension in FERC license issuance to conclude discussions regarding West Grand Lake fisheries. That extension has now expired and the discussions are concluded.</td>
</tr>
<tr>
<td>March 31, 2012</td>
<td>2615</td>
<td>Brassua *</td>
<td></td>
<td>November 15, 2015</td>
<td>November 14, 2016</td>
<td>2017</td>
<td>WQC application voluntarily withdrawn and resubmitted by applicant on 11/15/2015; DEP has a goal date of 10/14/16 for issuing a decision on the WQC application, prior to the November 14, 2016 statutory deadline.</td>
</tr>
<tr>
<td>March 1, 2016</td>
<td>2492</td>
<td>Vanceboro</td>
<td></td>
<td>September 17, 2014</td>
<td>October 1, 2015</td>
<td>March 2016</td>
<td>WQC application accepted as complete for processing on October 2, 2014. Agency comments on WQC application submitted by December 2014. DEP established an internal review schedule. WQC issued on September 24, 2015.</td>
</tr>
</tbody>
</table>

### Anticipated Hydropower Water Quality Certification Applications in the Next Five Years

<table>
<thead>
<tr>
<th>FERC License Expiration Date</th>
<th>FERC #</th>
<th>Project / Dam</th>
<th>Subordinate Dams</th>
<th>Anticipated WQC Application Filing Date</th>
<th>Anticipated Department WQC Deadline</th>
<th>Anticipated FERC relicense date</th>
<th>Steps to Achieve WQC Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31, 2017</td>
<td>2727</td>
<td>Ellsworth</td>
<td>Graham Lake Dam, Lake Leonard Dam</td>
<td>January 2017</td>
<td>December 2017</td>
<td>2018</td>
<td>DEP has received and reviewed the initial study report, and has reviewed and commented on the Draft License Application. Data presented was insufficient to determine if project meets water quality standards. Additional studies were authorized by FERC, and additional water quality studies are under way. Anticipate WQC application in 2017.</td>
</tr>
<tr>
<td>August 31, 2018</td>
<td>2520</td>
<td>Mattaceunk</td>
<td></td>
<td>August 2017</td>
<td>August 2018</td>
<td>2018</td>
<td>DEP has received and reviewed the initial study report. Project is on target, updated study report meeting scheduled January 2016. Anticipate DEP will review/comment on Draft License Application and receive WQC application in summer 2016.</td>
</tr>
</tbody>
</table>
## Maine Department of Environmental Protection

### FERC License Expiration Date

<table>
<thead>
<tr>
<th>FERC License Expiration Date</th>
<th>FERC #</th>
<th>Project / Dam</th>
<th>Subordinate Dams</th>
<th>Anticipated WQC Application Filing Date</th>
<th>Anticipated Department WQC Deadline</th>
<th>Anticipated FERC relicense date</th>
<th>Steps to Achieve WQC Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 29, 2020</td>
<td>2804</td>
<td>Goose River</td>
<td>Swan Lake Dam, Moos' Dam, Kelly Dam, Mill Dam, CMP Dam</td>
<td>February 2018</td>
<td>February 2019</td>
<td>2020</td>
<td>Applicant filed a Notice of Intent and PAD with FERC in 2015. DEP reviewed and commented on PAD and requested water quality studies. Anticipate issuance of study plan and study plan meeting in spring 2016; studies are expected during field season 2016.</td>
</tr>
<tr>
<td>No current FERC license</td>
<td>13884</td>
<td>Pennamaquan Tidal Power Plant Project</td>
<td>Summer 2018</td>
<td>Summer 2019</td>
<td>2020</td>
<td></td>
<td>Applicant filed and FERC granted a request for extension in December 2014, resulting in revised project schedule. There is no statutory deadline for filing an application for a new license, therefore the dates for this project are estimates.</td>
</tr>
<tr>
<td>January 31, 2021</td>
<td>2322</td>
<td>Shawmut</td>
<td></td>
<td>January 2019</td>
<td>January 2020</td>
<td>2021</td>
<td>Applicant applicant will file a PAD and hold a joint agency meeting in 2017. DEP will review the PAD and prepare study plan requests as appropriate.</td>
</tr>
<tr>
<td>August 31, 2021</td>
<td>3777</td>
<td>Rollinsford</td>
<td></td>
<td>August 2019</td>
<td>August 2020</td>
<td>2021</td>
<td>Applicant applicant will file a PAD and hold a joint agency meeting in 2017. DEP will review the PAD and prepare study plan requests as appropriate.</td>
</tr>
<tr>
<td>August 31, 2021</td>
<td>3820</td>
<td>Somersworth</td>
<td></td>
<td>August 2019</td>
<td>August 2020</td>
<td>2021</td>
<td>Applicant applicant will file a PAD and hold a joint agency meeting in 2017. DEP will review the PAD and prepare study plan requests as appropriate.</td>
</tr>
<tr>
<td>December 3, 2021</td>
<td>2368</td>
<td>Squa Pan</td>
<td></td>
<td>December 2019</td>
<td>December 2020</td>
<td>2021</td>
<td>Applicant applicant will file a PAD and hold a joint agency meeting in 2017. DEP will review the PAD and prepare study plan requests as appropriate.</td>
</tr>
<tr>
<td>March 31, 2022</td>
<td>5362</td>
<td>Lower Mousam</td>
<td>Kesslan Dam, Twine Mill Dam, Dane Perkins Dam</td>
<td>March 2020</td>
<td>March 2021</td>
<td>2022</td>
<td>Applicant applicant will file a PAD and hold a joint agency meeting in 2018. DEP will review the PAD and prepare study plan requests as appropriate.</td>
</tr>
<tr>
<td>April 30, 2022</td>
<td>4451</td>
<td>Lower Great Falls</td>
<td>April 2020</td>
<td>April 2021</td>
<td>2022</td>
<td></td>
<td>Applicant applicant will file a PAD and hold a joint agency meeting in 2018. DEP will review the PAD and prepare study plan requests as appropriate.</td>
</tr>
<tr>
<td>August 31, 2022</td>
<td>4784</td>
<td>Pejepscot</td>
<td>August 2020</td>
<td>August 2021</td>
<td>2022</td>
<td></td>
<td>Applicant applicant will file a PAD and hold a joint agency meeting in 2018. DEP will review the PAD and prepare study plan requests as appropriate.</td>
</tr>
<tr>
<td>November 30, 2022</td>
<td>2530</td>
<td>Hiram</td>
<td>November 2020</td>
<td>November 2021</td>
<td>2022</td>
<td></td>
<td>Applicant applicant will file a PAD and hold a joint agency meeting in 2018. DEP will review the PAD and prepare study plan requests as appropriate.</td>
</tr>
</tbody>
</table>

---

* Currently operating under an annual license.

Section 15(a)(1) of the Federal Power Act requires FERC, at the expiration of a license term, to issue an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the Federal Power Act. If the project’s prior license waived the applicability of Section 15 of the Federal Power Act, then, if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

### Abbreviations

- FERC = Federal Energy Regulatory Commission
- WQC = Water Quality Certification
- DEP = Department of Environmental Protection
- PAD = Pre-Application Document
- BEP = Board of Environmental Protection
- DIFW = Maine Department of Inland Fisheries and Wildlife
- USFWS = United States Fish and Wildlife Service