

**Report to the Joint Standing Committee on Environment and Natural
Resources
129th Legislature, First Session**

Pending and Anticipated Water Quality Certification Applications for Hydropower Projects

January 2019

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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. § 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 four WQC applications for hydropower relicensing projects.

During calendar year 2018, the Department issued one WQC within statutory deadlines for the following hydropower relicensing project:

- American Tissue (WQC issued November 29, 2018; FERC deadline December 12, 2018)

The Department anticipates receiving eighteen new WQC applications for FERC relicensing in the next five years.

In addition, the Department oversees two tidal energy projects (Cobscook Bay Tidal, and two projects in the Western Passage). One tidal energy project, Cobscook Bay Tidal, has a tidal power general permit which has a water quality certification; one project in the Western Passage has a preliminary permit (which, as developmental permits, do not include a water quality certification). The Department expects the preliminary permit for Western Passage to be replaced by a tidal power general permit when the project transitions to the in-water construction and testing phase.

II. Summary of FERC Relicensing Process

In Maine, there are 133 hydropower dams administered through 100 federal licenses or exemptions authorized by the Federal Energy Regulatory Commission (FERC). Per 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. § 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 2019-2023

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

- Brassua – The applicant voluntarily withdrew and resubmitted their WQC application with the Department on September 20, 2018. The new WQC deadline for a Department decision is on or before September 19, 2019. The Department will be meeting in January 2019 with the applicant to discuss the path forward in support of certification. The Department has created a customized Gantt chart for the WQC application review, with a goal date of August 20, 2019 for issuing a decision on the Brassua WQC application.
- Mattaceunk – The applicant submitted a WQC application on April 27, 2018; the Department has prepared a draft WQC. However, the Department has recommended to the Board of Environmental Protection that a segment of the main stem Penobscot River and a segment of the East Branch Penobscot River

be reclassified. If the reclassification proposal is successful, the draft WQC will be updated to reflect such changes as the Legislature approves. A customized Gantt chart was created for the WQC application review with a goal date of March 27, 2019, and a FERC filing deadline of April 26, 2019. These dates are expected to be extended in the event the reclassification proposal requires additional time.

- Lower Barker – The applicant voluntarily withdrew and resubmitted their WQC application with the Department on December 7, 2018. The new WQC deadline for a Department decision is on or before December 6, 2019. The Department will be meeting in January 2019 with the applicant to discuss the path forward in support of certification. The Department will create a customized Gantt chart for the WQC application review, with a goal date of November 7, 2019 for issuing a decision on the Lower Barker WQC application.
- Ellsworth Hydro – The applicant submitted a WQC application on April 9, 2018, and the application is currently under review. A customized Gantt chart was prepared for the project with a goal date of March 8, 2019. The FERC filing deadline is April 8, 2019.

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

- Maintenance of a calendar identifying WQC milestones and statutory deadlines;
- Creation of project-specific Gantt charts, with milestones and timelines for each WQC application, using Microsoft Project software. The Department sets an internal goal date of issuing a decision on each WQC application at least 30 days prior to the statutory date. Each Gantt chart is tracked and updated regularly, and widely distributed to appropriate staff; and
- Increased communication and coordination among Department staff involved in the review of WQC applications.

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

- Goose River – 2019
- Shawmut – 2019
- Rollinsford – 2019
- Squa Pan – 2019

- Western Passage (tidal hydropower project) - 2019
- Lower Mousam River – 2020
- Lower Great Falls – 2020
- Pejepscot – 2020
- Hiram – 2020
- Upper Barker – 2021
- Errol – 2021
- Pumpkin Hill – 2021
- Green Lake 2022
- West Enfield – 2022
- Hackett Mills – 2022
- Rumford Falls –2022
- Aziscohos – 2023
- Worumbo - 2023

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 2018

FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	WQC Application Filing Date	Department WQC Deadline	Licensing Action Completed	Comments
April 30, 2019	2809	American Tissue		December 13, 2017	December 12, 2018	2019	The WQC was issued on November 29, 2018 and filed with FERC on November 30, 2018, prior to the December 12, 2018 FERC statutory deadline.

Pending Hydropower Water Quality Certification Applications (As of 12/31/18)

FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	WQC Application Filing Date	Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline
March 31, 2012	2615	Brassua *		September 20, 2018	August 20, 2019	2019	WQC application voluntarily withdrawn and resubmitted by applicant on 9/20/2018; DEP has a goal date of 8/20/19 for issuing a decision on the WQC application, prior to the September 19, 2019 FERC statutory deadline. DEP will meet with the applicant in January regarding next steps.
August 31, 2018	2520	Mattaceunk*		April 27, 2018	March 27, 2019	2019	The WQC application was withdrawn and simultaneously resubmitted on April 27, 2018. DEP has submitted a proposal to BEP to correct an error in the water quality classification for the East Branch Penobscot River, and to upgrade the water quality classification in the purtenant segment of the main stem of the Penobscot River. DEP has a goal date of March 27, 2018 for issuing a decision on the WQC application, if reclass efforts are successful prior to that date.
December 31, 2017	2727	Ellsworth*	Graham Lake Dam, Lake Leonard Dam	April 9, 2018	March 9, 2019	2019	A WQC application was submitted on April 9, 2018. The applicant indicates it intends to file a Use Attainability Analysis to modify a designated use that has never been met and cannot be met under proposed operations.
January 31, 2019	2808	Lower Barker(*)		December 7, 2018	December 6, 2019	2019	WQC application voluntarily withdrawn and resubmitted by applicant on December 7, 2018. DEP has a goal date of November 7, 2019 for issuing a decision on the WQC application, prior to the December 6, 2019 FERC statutory deadline. DEP will meet with the applicant in January 2019 regarding next steps.

Anticipated Hydropower Water Quality Certification Applications in the Next Five Years

FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	Anticipated WQC Application Filing Date	Anticipated Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline
February 29, 2020	2804	Goose River	Swan Lake Dam Mason's Dam Kelly Dam Mill Dam CMP Dam	January 2019	January 2020	2020	A Draft License Application was filed with FERC in November 2017, the Department filed comments with FERC. The DEP anticipates a Final License Application to be filed in winter 2019, and an Environmental Assessment completed by FERC in summer 2019.
January 31, 2021	2322	Shawmut		January 2019	January 2020	2021	DEP reviewed and provided comment on the draft license application in December 2018. Brookfield is expected to submit a final license application and WQC application in winter 2019.
August 31, 2021	3777	Rollinsford		August 2019	August 2020	2021	DEP is coordinating study plans with NHDES, who also anticipates filing a WQC as the Salmon Falls River is a border between the states. The applicant met with DEP staff in November 2017 regarding studies for the 2018 field season.
August 31, 2021	3820	Somersworth		August 2019	August 2020	2021	Aclara Meters, LLC submitted an application to FERC to surrender its license to operate the project, citing excessive costs to repair the penstock. License surrender does not require the project obtain a WQC; a WQC application is, therefore, not anticipated.
December 3, 2021	2368	Squa Pan		December 2019	December 2020	2021	The applicant filed a PAD/NOI in May 2017. DEP filed study plan comments in January 2018. DEP assisted the applicant in selecting locations for sample collection in fall 2018, and anticipates that water quality studies will be completed during field season 2019.

Preliminary Permit	14743	Western Passage		December 2019	December 2020	2022	A preliminary permit for the project was granted by FERC in July 2016. The applicant has worked with NMFS to complete a biological assessment, and with the University of Maine to identify further data needs to support licensing, including testing monitoring equipment and methodologies; the applicant is collecting environmental data to prepare an application for a Tidal Power Demonstration Project and WQC. The DEP anticipates receiving a WQC application in late 2019.
January 31, 2022	12711	Cobscook Bay Tidal Energy Project		January 2020	January 2021	2022	In February 2012 FERC issued an 8-year pilot project license to Ocean Renewable Power Company (ORPC), with a license expiration date of January 31, 2020. In December 2015, FERC approved a request from ORPC to extend the term of the license to January 31, 2022. The Applicant intends to re-install a fully optimized device in 2019 and to test alternative turbine devices.

FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	Anticipated WQC Application Filing Date	Anticipated Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline
March 31, 2022	5362	Lower Mousam	Kessler Dam Twine Mill Dam Dane Perkins Dam	March 2020	March 2021	2022	Current owners of the dams voted in 2016 to not seek relicense, but other parties have expressed interest in acquiring the FERC license for this project. If an application is not filed with FERC within 2 years prior to license expiration, a surrender application will be filed by the current owners.
March 31, 2022	14856	Lower Mousam	Kessler Dam Twine Mill Dam Dane Perkins Dam	March 2020	March 2021	2022	DEP filed comments on the PAD in December 2017 and met with the applicants by phone and on site to discuss water quality studies, to be conducted during field season 2019.
April 30, 2022	4451	Lower Great Falls		April 2020	April 2021	2022	Water quality studies were carried out during the 2018 field season; DEP anticipates review and comment on the initial study results in winter 2019.
August 31, 2022	4784	Pejepscot		August 2020	August 2021	2022	Water quality studies were carried out during the 2018 field season; DEP anticipates review and comment on the initial study results in winter 2019.
November 30, 2022	2530	Hiram		November 2020	November 2021	2022	Water quality studies were carried out during the 2018 field season; DEP anticipates review and comment on the initial study results in winter 2019.
July 31, 2023	3562	Upper Barker		July 2021	July 2022	2023	DEP attended a scoping meeting and site visit in November 2018, and anticipates filing comments and a study plan request with FERC in January 2019.
August 29, 2023	3133	Errol		August 2021	August 2022	2023	DEP attended a scoping meeting and site visit in October 2018, and filed comments in November 2018. DEP is not the certifying agency for Errol Hydro, as the project discharge is entirely in the state of New Hampshire; however, as a portion of the impoundment lies within the state of Maine the Department requested certain water quality study parameters be added to the study requested by NHDES.
September 30, 2023	4293	Pumpkin Hill		September 2021	September 2022	2023	Anticipate applicant will file a PAD and hold a joint agency meeting in 2019. DEP will review the PAD and prepare study plan requests as appropriate.
April 30, 2024	7189	Green Lake		April 2022	April 2023	2024	Anticipate applicant will file a PAD and hold a joint agency meeting in 2019. DEP will review the PAD and prepare study plan requests as appropriate.
May 31, 2024	2600	West Enfield		May 2022	May 2023	2024	Anticipate applicant will file a PAD and hold a joint agency meeting in 2019. DEP will review the PAD and prepare study plan requests as appropriate.
August 31, 2024	6398	Hackett Mills		August 2022	August 2023	2024	Anticipate applicant will file a PAD and hold a joint agency meeting in 2019. DEP will review the PAD and prepare study plan requests as appropriate.
September 30, 2024	2333	Rumford Falls		September 2022	September 2023	2024	Anticipate applicant will file a PAD and hold a joint agency meeting in 2020. DEP will review the PAD and prepare study plan requests as appropriate.
March 31, 2025	4202	Aziscohos		March 2023	March 2024	2025	Anticipate applicant will file a PAD and hold a joint agency meeting in 2020. DEP will review the PAD and prepare study plan requests as appropriate.
November 30, 2025	3428	Worumbo		November 2023	November 2024	2025	Anticipate applicant will file a PAD and hold a joint agency meeting in 2020. DEP will review the PAD and prepare study plan requests as appropriate.
* Currently operating under an annual license. (*) Anticipate FERC will issue 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				PSP=Proposed Study Plan			
WQC=Water Quality Certification				NHDES=New Hampshire Department of Environmental Services			
DEP=Maine Department of Environmental Protection				NOI=Notice of Intent to File (an application)			
PAD=Pre-Application Document				ILP=Integrated Licensing Process			
NMFS=National Marine Fisheries Service							