

**Report to the Joint Standing Committee on Environment and Natural
Resources
127th Legislature, Second Session**

Pending and Anticipated Water Quality Certification Applications for Hydropower Projects

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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.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)
- American Tissue – (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.

- Lower Great Falls – (2020)
- Lower Mousam River – (2020)
- Pejepscot – (2020)
- Hiram – (2020)

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)
- American Tissue – (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							
FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	WQC Application Filing Date	Department WQC Deadline	Licensing Action Completed	Comments
March 1, 2045	2984	Eel Weir Dam		2043	2044	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.
November 1, 2045	2660	Forest City		2043	2044	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).

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

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
September 29, 2000	2618	West Branch *	West Grand Lake Dam Sysladobsis Dam Farm Cove Dam	March 2, 2012	March 1, 2013	2016	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.
March 31, 2012	2615	Brassua *		November 15, 2015	November 14, 2016	2017	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.
March 1, 2016	2492	Vanceboro		September 17, 2014	October 1, 2015	March 2016	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.

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
December 31, 2017	2335	Williams		January 2016	December 2016	2017	Final License Application filed with FERC on December 11, 2015. DEP expects WQC application in early 2016.
December 31, 2017	2531	West Buxton		January 2016	December 2016	2017	Final License Application filed with FERC on December 18, 2015. DEP expects WQC application in early 2016.
December 31, 2017	2727	Ellsworth	Graham Lake Dam Lake Leonard Dam	January 2017	December 2017	2018	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.
August 31, 2018	2520	Mattaceunk		August 2017	August 2018	2018	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.
January 31, 2019	2808	Lower Barker		January 2017	January 2018	2019	Anticipate Initial Study Report in spring 2016. Additional studies are scheduled for spring 2016. Anticipate WQC application in 2017.

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
April 30, 2019	2809	American Tissue		January 2017	January 2018	2019	Anticipate Initial Study Report in spring 2016. Anticipate WQC application in 2017.
February 29, 2020	2804	Goose River	Swan Lake Dam Mason's Dam Kelly Dam Mill Dam CMP Dam	February 2018	February 2019	2020	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.
No current FERC license	13884	Pennamaquan Tidal Power Plant Project		Summer 2018	Summer 2019	2020	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.
January 31, 2021	2322	Shawmut		January 2019	January 2020	2021	Applicant filed a PAD with FERC in 2015. DEP attended the joint agency meeting and site visit in December 2015 and will comment on PAD to request the necessary water quality studies. DEP anticipates issuance of a study plan and study plan meeting in spring 2016; studies are expected during field season 2016.
August 31, 2021	3777	Rollinsford		August 2019	August 2020	2021	Anticipate 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.
August 31, 2021	3820	Somersworth		August 2019	August 2020	2021	Anticipate 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.
December 3, 2021	2368	Squa Pan		December 2019	December 2020	2021	Anticipate 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.
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.
March 31, 2022	5362	Lower Mousam	Kessler Dam Twine Mill Dam Dane Perkins Dam	March 2020	March 2021	2022	Anticipate 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.
April 30, 2022	4451	Lower Great Falls		April 2020	April 2021	2022	Anticipate 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.
August 31, 2022	4784	Pejepscot		August 2020	August 2021	2022	Anticipate 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.
November 30, 2022	2530	Hiram		November 2020	November 2021	2022	Anticipate 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.

* 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