

Report to the Joint Standing Committee on Environment and Natural
Resources
128th Legislature, First 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. § 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 three WQC applications for the following hydropower relicensing projects:

- Williams
- Brassua
- West Buxton

During calendar year 2016, the Department did not issue any WQCs because there were no FERC deadlines; one WQC was drafted, but its application was withdrawn and simultaneously resubmitted by the applicant.

The Department anticipates receiving eighteen 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:

- Mattaceunk – (2017)
- 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 Mousam River – (2020)
- Lower Great Falls – (2020)
- Pejepscot – (2020)

- Hiram – (2020)
- Upper Barker – (2021)
- Errol – (2021)
- Pumpkin Hill – (2021)

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. § 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 2017-2021

The Department currently is reviewing three 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 October 19, 2016. The new WQC deadline for a Department decision is on or before October 18, 2017. The Department will be meeting in January 2017 with the applicant to discuss permitting issues on this application and the results of additional data collected in 2016. The Department has created a customized Gantt chart for the WQC application review, with a goal date of August 14, 2017 for issuing a decision on the Brassua WQC application.
- Williams – A WQC application was submitted to the Department on July 12, 2016, and the deadline for a Department decision is on or before July 11, 2017. The Department has created a customized Gantt chart for the WQC application review, with a goal date of June 11, 2017 for issuing a decision on the Williams WQC application.
- West Buxton – A WQC application was submitted to the Department on December 12, 2016, and the deadline for a Department decision is on or before December 11, 2017. The Department is preparing a customized Gantt chart for the WQC application review, with a goal date of November 9, 2017 for issuing a decision on the West Buxton 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 Gantt charts, with milestones and timelines for each WQC application, using Microsoft Project software. DEP 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
- Increased communication and coordination among Department staff involved in the review of WQC applications

The Department anticipates receiving eighteen 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:

- Mattaceunk – (2017)
- 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 Mousam River – (2020)
- Lower Great Falls – (2020)
- Pejepscot – (2020)
- Hiram – (2020)
- Upper Barker – (2021)
- Errol – (2021)
- Pumpkin Hill – (2021)

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 2016

FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	WQC Application Filing Date	Department WQC Deadline	Licensing Action Completed	Comments
March 1, 2046	2618	West Branch	West Grand Lake Dam Sysladobsis Dam Farm Cove Dam	March 2, 2012	March 1, 2013	March 15, 2016	DEP submitted comments to FERC on 8/19/2013 for operating conditions to ensure continued attainment of Maine's water quality standards. WQC waived on 3/2/2013. The Order for a New License was issued by FERC on March 15, 2016 for a term of 30 years, which incorporated DEP's comments on conditions to ensure that operations will meet Maine's water quality standards.
March 1, 2046	2492	Vanceboro		September 17, 2014	October 1, 2015	March 22, 2016	DEP issued aWQC on September 24, 2015. The Order for a New License was issued by FERC on March 22, 2016 for a term of 30 years. FERC included 8 of the 11 DEP recommendations in their final Order.

Pending Hydropower Water Quality Certification Applications (As of 12/31/16)

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
December 31, 2017	2335	Williams		July 12, 2016	July 11, 2017	2017	Final License Application filed with FERC on December 11, 2015, WQC application submitted to DEP on July 12, 2016. Resource Agency review comments received September 2016. DEP is working on the draft WQC, and has a goal date of May 31, 2017 for issuing a decision on the WQC application, prior to the July 11, 2017 statutory deadline.
March 31, 2012	2615	Brassua *		October 19, 2016	October 18, 2017	2018	WQC application voluntarily withdrawn and resubmitted by applicant on 10/19/2016; DEP has a goal date of 8/14/16 for issuing a decision on the WQC application, prior to the October 18, 2017 statutory deadline.
December 31, 2017	2531	West Buxton		December 12, 2016	December 11, 2017	2018	Final License Application filed with FERC on December 18, 2015. DEP filed comments to FERC on the Final License Application. DEP received a WQC application on December 12, 2016. Agency consultation is underway. DEP has a goal date of November 10, 2017 for issuing a decision on the WQC application, prior to the December 11, 2017 statutory deadline.

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
August 31, 2018	2520	Mattaceunk		July 2017	July 2018	2018	DEP has received and reviewed the initial study report. DEP reviewed and commented on Draft License Application, and received Final License Application in August 2016. FERC requested additional information in October, 2016 that will be filed within 90 days, or January 2017. DEP expects the project to be deemed Ready for Environmental Analysis by FERC in May 2017 and expects to receive a WQC application in July 2017.
December 31, 2017	2727	Ellsworth	Graham Lake Dam, Lake Leonard Dam	December 2017	December 2018	2019	Applicant has filed Draft License Application, and DEP has submitted comments. Additional studies were approved by FERC, results were inconclusive and additional year for fish passage study was requested by Applicant. DEP anticipates receiving WQC application in December 2017.
January 31, 2019	2808	Lower Barker		February 2017	February 2018	2019	DEP received and reviewed Initial Study Report in 2016. Review of Draft License Application is underway, comments will be filed with FERC in January 2017; DEP anticipates WQC application in 2017.
April 30, 2019	2809	American Tissue		August 2017	August 2018	2019	Anticipate Initial Study Report with Draft License Application in Spring 2017. Anticipate review and filing DEP comment on Draft License Application and receipt of 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
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. Study plan was issued in spring 2016; studies were conducted 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 commented on PAD to request the necessary water quality studies. DEP participated in study plan review and study plan meeting in spring 2016; studies were conducted during field season 2016, study reports are expected early in 2017.
August 31, 2021	3777	Rollinsford		August 2019	August 2020	2021	Applicant filed the PAD and held a joint agency meeting in November 2016. DEP reviewed the PAD and prepared study plan requests. DEP is coordinating study plans with NHDES, who also anticipates filing a WQC as the Salmon Falls River is a border between the states.
August 31, 2021	3820	Somersworth		August 2019	August 2020	2021	Applicant filed the PAD and held a joint agency meeting in November 2016. DEP reviewed the PAD and prepared study plan requests. DEP is coordinating study plans with NHDES, who also anticipates filing a WQC as the Salmon Falls River is a border between the states.
December 3, 2021	2368	Squa Pan		December 2019	December 2020	2021	Anticipate applicant will file a license surrender application in 2017. DEP will review the surrender application and prepare comments 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	Kesslan 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. DEP anticipates that an applicant may file a PAD and hold a joint agency meeting, or may file a license surrender application in 2018. DEP will review the PAD and prepare study plan requests, or will comment on a surrender application, 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 2017. 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.
July 31, 2023	3562	Upper Barker		July 2021	July 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.
August 29, 2023	3133	Errol		August 2021	August 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.
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.

* 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=Maine Department of Environmental Protection							
PAD=Pre-Application Document							
BEP=Board of Environmental Protection							
DIFW=Maine Department of Inland Fisheries and Wildlife							
NHDES=New Hampshire Department of Environmental Services							