

**Report to the Joint Standing Committee on Environment and Natural
Resources
128th 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. § 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 2017, the Department issued two WQCs within statutory deadlines for the following hydropower relicensing projects:

- Williams (WQC issued June 19, 2017; FERC deadline July 11, 2017)
- West Buxton (WQC issued November 9, 2017; FERC deadline December 11, 2017)

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

In addition, the Department oversees two tidal energy projects (Cobscook Bay Tidal, and 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 permit, does not include a water quality certification). The Department expects the preliminary permit for Western Passage to be replaced by 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 137 hydropower dams administered through 102 federal licenses 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 2018-2022

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 October 2, 2017. The new WQC deadline for a Department decision is on or before October 1, 2018. The Department will be meeting in January 2018 with the applicant to discuss permitting issues on this application and plans to provide information in support of certification. The Department has created a customized Gantt chart for the WQC application review, with a goal date of September 1, 2018 for issuing a decision on the Brassua WQC application.
- Mattaceunk – The applicant submitted a WQC application on May 23, 2017; the Department is currently preparing a draft WQC. A customized Gantt chart

was created for the WQC application review with a goal date of April 20, 2018, and a FERC filing deadline of May 22, 2018.

- American Tissue – The applicant submitted a WQC application on December 13, 2017 which is currently under review. A customized Gantt chart will be prepared for the project with a goal date 11 months from application acceptance. The FERC filing deadline is December 12, 2018.
- Lower Barker – The applicant submitted a WQC application on December 21, 2017 which is currently under review. A customized Gantt chart will be prepared for the project with a goal date 11 months from application acceptance. The FERC filing deadline is December 20, 2018.

The Department maintains 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; and
- Increased communication and coordination among Department staff involved in the review of WQC applications.

The Department anticipates receiving seventeen 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:

- Ellsworth - 2018
- Goose River – 2018
- Shawmut – 2019
- Rollinsford – 2019
- Somersworth – 2019
- Squa Pan – 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
- Hacket Mills – 2022
- Rumford Falls –2022

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 2017

FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	WQC Application Filing Date	Department WQC Deadline	Licensing Action Completed	Comments
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 issued the WQC on June 19, 2017, prior to FERC's July 11, 2017 statutory deadline.
December 31, 2017	2531	West Buxton		December 12, 2016	December 11, 2017	2017	Final License Application filed with FERC on December 18, 2015. DEP received a WQC application on December 12, 2016. DEP filed the WQC with FERC on November 9, 2017, well before the December 11, 2017 FERC statutory deadline. DEP filed a Corrected Order (addressing final recreation plan) on December 7, 2017.

Pending Hydropower Water Quality Certification Applications (As of 12/31/17)

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 *		October 2, 2017	October 1, 2018	2018	WQC application voluntarily withdrawn and resubmitted by applicant on 10/2/2017; DEP has a goal date of 9/1/18 for issuing a decision on the WQC application, prior to the October 1, 2018 FERC statutory deadline. DEP will meet with the applicant in January regarding next steps.
August 31, 2018	2520	Mattaceunk		May 22, 2017	May 21, 2018	2018	FERC determined the project to be Ready for Environmental Analysis in May 2017 and DEP received a WQC application on May 23, 2017. DEP is working on the draft WQC, and has a goal date of April 20, 2018 for issuing a decision on the WQC application, prior to the May 22, 2018 FERC statutory deadline.
April 30, 2019	2809	American Tissue		December 13, 2017	December 12, 2018	2019	The WQC application was filed with the DEP on December 13, 2017. DEP is working on the draft WQC, and has a goal date of November 10, 2018 for issuing a decision on the WQC application, prior to the December 12, 2018 FERC statutory deadline.
January 31, 2019	2808	Lower Barker		December 21, 2017	December 20, 2018	2019	The Project was determined by FERC to be Ready for Environmental Analysis in November 2017. WQC application was filed on December 21, 2017. DEP is working on the draft WQC, and has a goal date of November 19, 2018 for issuing a decision on the WQC application, prior to the December 20, 2018 FERC 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
December 31, 2017	2727	Ellsworth	Graham Lake Dam, Lake Leonard Dam	June 2018	June 2019	2019	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 late spring 2018. It is anticipated that FERC will issue an annual license renewal, allowing the facility to continue to operate until a new license is issued.
February 29, 2020	2804	Goose River	Swan Lake Dam Mason's Dam Kelly Dam Mill Dam CMP Dam	February 2018	February 2019	2020	A Draft License Application was filed with FERC in November 2017 and is under review. The DEP anticipates a Final License Application to be filed in spring 2018.
Preliminary Permit	13884	Pennamaquan Tidal Project		N/A	N/A	N/A	FERC terminated the ILP licensing process in February 2016. FERC cancelled the preliminary permit for the project in March 2016.
Preliminary Permit	14743	Western Passage		N/A	N/A	N/A	Applicant filed for preliminary permit in December 2015; the preliminary permit 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 will identify the preferred deployment location in early 2018.
January 31, 2021	2322	Shawmut		January 2019	January 2020	2021	DEP participated in study plan review and study plan meeting in spring 2016; studies were conducted during field season 2016, study reports were filed in August 2017, and DEP filed comments on the study report in September 2017. Concurrent with the re-licensing of the Shawmut dam, the applicant is working to develop plans for fish passage, pursuant to the Kennebec Hydro Developer's Group settlement agreement. Fish passage designs are approaching 60% complete. This concurrent work on fish passage will help the project to meet the designated use of habitat for fish.
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	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.
December 3, 2021	2368	Squa Pan		December 2019	December 2020	2021	The applicant filed a PAD/NOI in May 2017. DEP attended a scoping meeting in July 2017 and provided comment on the PAD in August 2017. A proposed study plan was filed in October 2017 and a PSP meeting was held in November 2017. DEP is working informally with the applicant's consultant to modify the study plan and will file study plan comments in January 2018. DEP anticipates that studies will be completed during field season 2018.
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 2018 and to test alternative turbine devices.
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. 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.

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	14856	Lower Mousam	Kesslan Dam Twine Mill Dam Dane Perkins Dam	March 2020	March 2021	2022	Two groups filed PADs, America First Hydro was selected to move forward and was assigned FERC Project Number P-14856. DEP attended a scoping meeting in December 2017 and filed comments on the PAD in December 2017.
April 30, 2022	4451	Lower Great Falls		April 2020	April 2021	2022	The applicant filed a PAD in December 2016 and held a joint agency meeting in April 2017. DEP reviewed the PAD and prepared study plan requests and comments, filed with FERC in May 2017. The applicant met with DEP staff in November 2017 regarding studies for the 2018 field season.
August 31, 2022	4784	Pejepscot		August 2020	August 2021	2022	The applicant filed a PAD in August 2017 and held a scoping meeting in November 2017. DEP reviewed the PAD and filed PAD comments in December 2017. DEP anticipates that Study Plans will be proposed in Spring 2018 and that studies will be undertaken in field season 2018.
November 30, 2022	2530	Hiram		November 2020	November 2021	2022	The applicant filed a PAD in November 2017. DEP anticipates that a scoping meeting will be held in March 2018 and that study planning will be undertaken in summer 2018. DEP will comment on 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 2018. 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 2018. 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.
April 30, 2024	7189	Green Lake		April 2022	April 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.
May 31, 2024	2600	West Enfield		May 2022	May 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.
August 31, 2024	6398	Hacket Mills		August 2022	August 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.
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.
* 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			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							