



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Western Region Eugene Office

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February 6, 2020

VIA EMAIL, CERTIFIED MAIL, and U.S. FIRST CLASS MAIL

Steve Albertelli  
PacifiCorp, License Program Manager  
925 South Grape Street, Building 5  
Medford, OR 97501

Re: Prospect No. 3 Hydroelectric Project FERC Project No. P-2337  
Certification Pursuant to Section 401 of the Federal Clean Water Act

Dear Mr. Albertelli:

On February 13, 2018, PacifiCorp submitted a Clean Water Act Section 401 Water Quality Certification (401 WQC) Application for the continued operation of the Prospect No.3 hydroelectric facility. DEQ issued a 401 WQC to PacifiCorp on February 7, 2019.

On February 21, 2019, PacifiCorp filed its request for hearing regarding certain conditions of the 401 WQC pursuant to OAR 340-048-0045(2) and DEQ referred the matter to the Office of Administrative Hearings on July 30, 2019 for a contested case hearing.

On September 27, 2019, the Federal Energy Regulatory Commission (FERC) issued a new license for the project pursuant to the Federal Power Act (License). The License incorporated the conditions of the 401 WQC, including the conditions that were the subject of PacifiCorp's request for a contested case hearing.

On December 31, 2019, DEQ and PacifiCorp signed a Settlement Agreement to resolve the dispute over the conditions in the 401 WQC whereby PacifiCorp modified its proposed actions that were subject of DEQ's water-quality compliance evaluation.

DEQ's evaluation of these proposed actions was conducted pursuant to Section 401 of the Clean Water Act, 33 USC §1341, ORS 468B.035 through 468B.047, and DEQ's certification rules found in Oregon Administrative Rules 340, Division 048.<sup>1</sup> To certify the Project, DEQ must have reasonable assurance that the proposed activities will be conducted in a manner that will not violate the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, and Oregon water quality standards in Oregon Administrative Rules 340, Division 041, adopted to implement these sections.

After consideration of public comment and effective as of the date of this letter, DEQ approves PacifiCorp's request for water quality certification, as conditioned in the attached certification decision, and for the reasons specified in the associated Evaluation and Findings Report.

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<sup>1</sup> DEQ designates the agency file, including but not limited to all materials submitted by PacifiCorp, as the record.

The certification is valid for PacifiCorp only and is not transferable without written approval from DEQ, in accordance with OAR 340-048-0042(6).

In accordance with OAR 340-048-0045(2), PacifiCorp may request a contested case hearing to be conducted in accordance with the Oregon Administrative Procedures Act (Oregon Revised Statute, chapter 183 and OAR 137-003-0501 to -0700) if dissatisfied with the certification decision, including any conditions to the approved certification. Such a request must be made in writing and comply with OAR 340-011-0530(2) and OAR 340-048-0045(2). The request for hearing must be mailed to and received by the Department of Environmental Quality within 20 days of the date of mailing (set forth above):

Oregon Department of Environmental Quality  
Attn: Marilyn Fonseca  
700 NE Multnomah, Suite 600  
Portland, OR 97232

If a written request for hearing is not received within the 20-day period, your right to a hearing shall be considered waived. If a timely request for hearing is received by the Department, you will be notified of the time and place of the hearing and provided information on the procedures by which contested cases are heard, your rights, the import and effect of such a hearing, and your rights and remedies. As a corporation, you must be represented by legal counsel at this hearing, if any. In accordance with OAR 340-048-0045(3), this certification decision is effective upon the issuance of this decision, notwithstanding a request for a contested case hearing or other judicial review, if any.

Sincerely,



Keith Andersen  
Western Region Administrator

Attachment: Clean Water Act Section 401 Conditions  
Enclosures: Evaluation and Findings Report

Ec: David Belyea, DEQ  
Chris Stine, DEQ  
Marilyn Fonseca, DEQ  
Mary Grainey, OWRD  
Ken Homolka, ODFW  
Anika Marriott, ODOJ

## NOTICE TO ACTIVE DUTY SERVICEMEMBERS

Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through:

<http://legalassistance.law.af.mil/content/locator.php>