



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

ORIGINAL

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June 23, 2003

Dirk Kempthorne, Governor
Stephanie Alford, Director

Mr. Bill Eaquinto
Managing Director, Hydro Relicensing
PacifiCorp
825 NE Multnomah
Portland OR 97232

FILED
THE SECRETARY
JUN 30 PM 2:07
FEDERAL ENERGY
REGULATORY COMMISSION

Re: 401 Certification for PacifiCorp's Bear River Hydroelectric Projects, FERC project nos. 20, 472, and 2401, Caribou and Franklin counties, Idaho.

Dear Mr. Eaquinto:

The Idaho Department of Environmental Quality (IDEQ) has considered water quality certification for PacifiCorp's Bear River Hydroelectric Projects, FERC project nos. 20, 472, and 2401, Caribou and Franklin counties, Idaho. Discharges from these facilities influence water quality in a significant portion of the Bear River in Idaho.

This letter will serve as certification by the State of Idaho pursuant to the provisions of Section 401 of the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC 1341. If PacifiCorp complies with the terms and conditions in the FERC licenses and the conditions set forth in this 401 certification, there is a reasonable assurance the operation of these facilities will comply with the applicable requirements of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and the Idaho Water Quality Standards and Wastewater Treatment Requirements (Water Quality Standards or WQS).

Idaho's Water Quality Standards (IDAPA §58.01.02) have three basic components: beneficial use classifications for waters of the state; criteria to protect existing and designated beneficial uses; and an anti-degradation policy. PacifiCorp's hydropower facilities are located directly on Bear River which is protected for the following uses: coldwater aquatic life, salmonid spawning, primary contact recreation, agricultural and industrial water supply, wildlife habitat and aesthetics (IDAPA §58.01.02.100.03.b.c, 04, 05 and 160.02.03). Bear River in vicinity of the three hydroprojects is currently listed as an impaired waterbody on the State of Idaho's 1998 303(d) list. Pollutants listed as potentially impairing water quality are sediment, nutrients, and flow alteration. The State of Idaho currently has a draft Total Maximum Daily Load Plan for the affected reaches of Bear River.

Idaho's anti-degradation policy requires the maintenance of existing uses and the level of water quality necessary to protect those uses. DEQ's review has focused on direct, cumulative and potential future impacts of these projects on restoring and/or maintaining existing beneficial uses in Bear River.

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The following conditions are necessary to ensure compliance with Idaho Water Quality Standards:

GRACE/COVE PROJECT--GRACE BYPASS

1. PacifiCorp shall conduct the following described monitoring in the Grace bypass:
 - a. PacifiCorp shall develop a water quality monitoring plan ("Grace WQMP") to monitor temperature, dissolved oxygen, nutrients, specific conductance, and turbidity. The purpose of the Grace WQMP is to characterize water quality conditions in the Grace bypass reach and determine the project's contribution to any violation of water quality criteria as set forth in the Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02. The Grace WQMP will record at an interval of 60 minutes or less, dissolved oxygen (DO), temperature, turbidity, and specific conductance at four sites in Black Canyon between July 1 and September 30. The four sites will be: 1) the top of the Grace forebay, 2) upstream of the springs, 3) at the downstream end of Grace bypass and 4) a site to be determined by IDEQ and PacifiCorp in vicinity of the Cove Project. Data will be collected continuously for a 7-day period during the first half of each month. Concurrent with continuous monitoring at the four sites, PacifiCorp will collect samples during each 7-day period [frequency to be discussed and determined with IDEQ] for nutrients (ie.,- nitrogen and phosphorus species). PacifiCorp will monitor flows in the Grace bypass reach; the flow data shall at a minimum be sufficient to determine average daily flows as recorded at the gaging station below Grace Dam. PacifiCorp shall implement the Grace WQMP upon IDEQ approval pursuant to Paragraph 7 below.
 - b. The Grace WQMP shall be conducted for a 6-year period. PacifiCorp will submit on an annual basis a report of data collected under the Grace WQMP. Based on review of these annual data reports, PacifiCorp and/or IDEQ may deem changes to be necessary to either the duration or scope of monitoring. Incorporation of proposed changes to the plan and subsequent implementation will be based on mutual agreement between IDEQ and PacifiCorp.
2. If IDEQ determines, based upon data collected by PacifiCorp (as reflected in PacifiCorp's annual reports submitted to IDEQ in November of each year, containing the results of water quality monitoring) and any other relevant information, that operation of the Grace/Cove Project causes or contributes to a violation of the Water Quality Standards in the Grace bypass, then within 90 days of IDEQ's request, PacifiCorp shall submit a Grace Bypass Mitigation Plan to IDEQ for approval that describes those measures PacifiCorp shall take to address the violations caused by the Grace/Cove Project. PacifiCorp must obtain approval of the Grace Bypass Mitigation Plan consistent with the requirements of this certification within 180 days of its submittal. PacifiCorp shall implement and comply with the Grace Bypass Mitigation Plan once it is approved by IDEQ. PacifiCorp's failure to submit a Mitigation

Plan consistent with the requirements of this certification, or a failure to comply with an approved Mitigation Plan is a violation of the terms of this certification and the FERC license for the projects.

ONEIDA PROJECT--BEAR RIVER DOWNSTREAM OF THE ONEIDA DAM

3. PacifiCorp shall maintain the following ramping rates associated with the Oneida project: 3.0 inches every 15 minutes on the descending arm of the ramp in the Oneida reach measured at a designated site between river miles 26 and 30 (see figure 3 in Dobrowolski and Allred, 1999¹). PacifiCorp shall develop a relationship between ramping rate and stage at USGS Gage No. 10086500 and this designated downstream location. Once this relationship is established, PacifiCorp will conduct continuous monitoring of flows (on an interval of 15 minutes or less) at the gage station (USGS Gage No. 10086500) below the Oneida powerhouse to determine compliance with the ramping requirement at this downstream location. Implementation of ramping rates and flow monitoring shall begin when the new license for the Oneida project has been issued by FERC and accepted by PacifiCorp and will be continued by PacifiCorp throughout the term of the license. These data shall be made available to IDEQ in electronic format on request.
4. At the November meeting of the Bear River Commission, PacifiCorp shall provide IDEQ a report for the preceding water year that describes PacifiCorp's operation of the Oneida Project. The report shall set forth a record showing the times during the preceding water year when PacifiCorp released water for power production, flood control, irrigation delivery, facility maintenance or for other reasons. The annual report shall be delivered to IDEQ each year during the term of the New License.
5. PacifiCorp shall develop a water quality monitoring plan (Oneida WQMP) to monitor for temperature, dissolved oxygen, specific conductance, sediment, nutrients and turbidity. The purpose of the Oneida WQMP is to characterize water quality conditions in the Bear River from Oneida powerhouse to the Idaho/Utah border ("Oneida reach") and to determine the project's contribution to any violations of water quality criteria as set forth in the Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02. Continuous monitoring consisting of temperature, specific conductance, dissolved oxygen and turbidity will be conducted downstream of Riverdale in mainstem Bear River at the site between river miles 26 and 30 identified in paragraph 3 and recorded at an interval of 60 minutes or less for a minimum period of 18 months commencing after the new license has been issued by FERC and accepted by PacifiCorp. Monitoring for suspended sediment and nutrients (at a minimum total and dissolved phosphorus) shall be conducted to establish a statistically significant relationship between these parameters and turbidity as recorded by the continuous monitoring station (i.e., approximately 30 samples during the 18-month monitoring period). Sampling for suspended sediment and nutrients shall be collected to represent the range of flows experienced during the annual hydrograph in the Oneida reach. PacifiCorp shall implement the Oneida WQMP upon IDEQ approval pursuant to Paragraph 7 below.

¹ Dobrowolski, James P. and Michael D. Allred. 1999. Potential for Bank Stability Decline Due to Drastic Flow Level Change in Bear River. Department of Rangeland Resources, Watershed Science Unit, Utah State University, Logan, Utah. December 8.

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6. If IDEQ determines, based upon data collected by PacifiCorp and any other relevant information, that operation of the Oneida Project causes or contributes to a violation of Water Quality Standards in the Bear River downstream of the Oneida reach, then within 90 days of IDEQ's request, PacifiCorp shall submit an Oneida Reach Mitigation Plan to IDEQ for approval that describes those measures PacifiCorp shall take to address the violations caused by the Oneida Project. PacifiCorp must obtain approval of the Oneida Reach Mitigation Plan consistent with the requirement of this certification within 180 days of its submittal. PacifiCorp shall implement and comply with the Mitigation Plan once it is approved by IDEQ. Failure to submit an Oneida Reach Mitigation Plan consistent with this Certification or failure to comply with an approved Mitigation Plan is a violation of the terms of this certification and the FERC license for the projects.

BEAR RIVER PROJECTS MONITORING PLAN

7. Within 30 days of Federal Energy Regulatory Commission (FERC) issuance and PacifiCorp's acceptance of new licenses for the Bear River Projects, PacifiCorp will submit the Grace and Oneida WQMP's (collectively called the Bear River Projects Monitoring Plan) for IDEQ approval. At a minimum, the Bear River Projects Monitoring Plans will identify the sites for the monitoring and the manner in which PacifiCorp shall collect and report the data, including QA/QC requirements, in order to meet the requirements set forth in this certification. PacifiCorp must obtain the approval of the plan within 90 days of its submittal. PacifiCorp shall implement and comply with the plan once it is approved by IDEQ.

OTHER PROVISIONS

8. IDEQ reserves the authority to amend this certification to require additional plans, corrective actions or other requirements if information acquired since the date of this certification indicates the Bear River Projects cause or contribute to violations of Water Quality Standards not covered by the Grace or Oneida Mitigation Plans. This includes the authority to amend this certification as a result of submission and approval of Total Maximum Daily Load plans for waters of the Bear River Basin affected by the projects.
9. IDEQ agrees that in no event shall the Mitigation Plans or any other plans, actions or requirements developed or submitted pursuant to this certification require PacifiCorp to breach or take action inconsistent with the relevant Water Contracts and Agreements listed in Appendix C of the Settlement Agreement Resolving the Relicensing of The Bear River Hydroelectric Projects dated August 28, 2002. In addition, IDEQ shall, if requested, consider site specific criteria, variances and designated use changes when IDEQ reviews and makes determinations regarding water quality, regardless of whether the operation of the Bear River Projects causes or contributes to a violation of Water Quality Standards and plans, actions or requirements under this certification. If a request for a variance is made, IDEQ shall, in accordance with the variance provisions of the Water Quality Standards, consider whether it is feasible to alter operation of the projects in a manner to attain Water Quality Standards. IDEQ's actions with respect to plans, actions or requirements developed or submitted

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pursuant to this certification shall be governed by the applicable provisions of the Environmental Protection and Health Act, Idaho Code sections 39-101 et seq., the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, and the Idaho Administrative Procedures Act, Idaho Code section 67-5279. Nothing in this paragraph shall create any rights or liabilities that do not otherwise exist under applicable laws.

This section 401 certification and associated conditions may be appealed by submitting to IDEQ a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the Rules of Administrative Procedure Before the Board of Environmental Quality IDAPA 58.01.23, within 35 days of the date of this letter.

Questions concerning the actions taken in this letter should be addressed to Lynn R. Van Every, Pocatello Regional DEQ at (208) 236-6160.

Sincerely,



Tiffany Floyd

Acting Regional Administrator

cc: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission
Susan O'Brien, Federal Energy Regulatory Commission
Monte Garrett, Sr. Environmental Analyst, PacifiCorp Portland
David Mabe, Water Program Administrator, DEQ Boise
Douglas Conde, Deputy Attorney General, DEQ Boise
Douglas Abderhalden, 401 Coordinator, DEQ Boise