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**Report to the Joint Standing Committee on Environment and
Natural Resources
130th Legislature, Second Regular Session**

Pending and Anticipated Water Quality Certification Applications for Hydropower Projects

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Contacts: Nicholas Livesay, Director
Bureau of Land Resources
Phone: (207) 530-0965

Kathy Howatt, Hydropower Coordinator
Phone: (207) 446-2642



MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 State House Station | Augusta, Maine 04330-0017
www.maine.gov/dep

I. Overview

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. 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 hydropower relicensing projects.

During calendar year 2021, the Department issued two WQC decisions for the following hydropower projects as part of the Federal Energy Regulatory Commission (FERC) relicensing process:

- Rollinsford Hydroelectric Project (WQC (approval) issued June 11, 2021; FERC deadline June 11, 2021)
- Scopan Hydroelectric Project (WQC (approval) issued July 1, 2021; FERC deadline July 2, 2021)

The Department also reviewed the WQC application for the Shawmut Project. The application was submitted to the Department on August 28, 2020, by the project owner. The application had a FERC deadline of August 27, 2021. The Department was in the process of reviewing the WQC and was prepared to issue a decision within one year of the refiling. The Department issued a draft decision on August 11, 2021 for public comment. On August 18, 2021 the applicant withdrew its application, noting in its withdrawal letter that the application before the Department did not include all the necessary documents and decisions related to fish passage at the site, and that a new application would be filed with the Department, setting a new one-year deadline for a Department decision. A new WQC application was submitted to the Department on October 18, 2021 and is currently under review. The Department will issue a final decision on this application by or before October 17, 2022.

The Department anticipates receiving 16 new WQC applications associated with FERC dam relicensing in the next five years. In addition, the Department oversees two tidal energy projects (Cobscook Bay Tidal and the Western Passage, which includes two installations). One tidal energy project, Cobscook Bay Tidal, has a tidal power general permit that has a water quality certification that will expire in 2022; during 2021 the shore station and subsea cable were decommissioned; the Project is no longer proposed to connect with the nation's power grid and so a WQC is no

longer required. The project in the Western Passage has a preliminary permit (which does not include a water quality certification). The Department expects the preliminary permit for Western Passage to be replaced by a tidal power general permit when the project transitions to the in-water construction and testing phase.

Two hydropower facilities (Bar Mills and Lower Mousam) that previously were anticipated to complete WQC and FERC relicensing efforts filed to surrender their operating license in 2021.

II. Summary of FERC Relicensing Process

In Maine, there are 124 hydropower dams administered through 94 federal licenses or exemptions authorized by the Federal Energy Regulatory Commission (FERC). Per Section 401 of the federal Clean Water Act (33 U.S.C. § 1341), 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 water 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 the federal licensing of hydropower projects in Maine. Section 401 provides up to one year for states to issue decisions on WQC applications.

Title 38, section 638 requires the Department to submit an annual report on the status of pending WQC applications and a list of the relicensing projects anticipated to be submitted to the Department in the next five years. Section 638 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 2022-2027

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.

- Hiram – The applicant submitted a WQC application on March 12, 2021, and the application is currently under review. A Department decision is expected to be issued prior to the statutory deadline of March 11, 2022.
- Pejepscot – The applicant submitted a WQC application on June 9, 2021, and the application is currently under review. A WQC decision will be issued prior to the FERC filing deadline of June 8, 2022.
- Lower Great Falls – The applicant submitted a WQC application on April 6, 2021. Power generation facilities and the primary discharge at the Project are located in New Hampshire, although high seasonal flows pass over the entire dam, including into Maine waters. A WQC decision with conditions appropriate for the continued operation of the Project is expected to be issued by NHDES and DEP prior to the FERC filing deadline of April 5, 2021.

The Department maintains steps to improve the internal permitting process for hydropower WQC applications, including:

- Maintenance of a calendar identifying WQC milestones and statutory deadlines;
- Communication and coordination among Department staff involved in the review of WQC applications.

The Department anticipates receiving 16 new WQC applications for FERC relicensing in the next five years. For these projects, the dates listed are the anticipated dates for receiving a WQC application:

- Ellsworth - 2022
- Green Lake – 2022
- West Enfield – 2022
- Upper Barker – 2022
- Hackett Mills – 2022
- Rumford Falls – 2022
- Lowell Tannery – 2022
- Aziscohos – 2023
- Worumbo – 2023

- Lewiston Falls – 2024
- Penobscot Mills – 2024
- Ripogenus – 2024
- Eustis – 2024
- Brunswick – 2027
- Medway – 2027
- Cataract - 2027

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 2021							
FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	WQC Application Filing Date	Department WQC Deadline	Licensing Action Completed	Comments
August 31, 2021	3777	Rollinsford*		June 2020	June 2021	2022	DEP coordinated study plans with NHDES as the Salmon Falls River is a border between the states. A Final License Application filed with FERC in August 2019 was found deficient and a request for more information and an extension was issued by FERC in October. A WQC application was received in June 2020; the Department issued a WQC approval in June 2021. DEP coordinated with NHDES, which also issued a WQC, to develop conditions for continued operation of the Project. DEP anticipates a new license will be issued by FERC in 2022.
December 3, 2021	2368	Scopan* (formally known as Squa Pan)		July 2020	July 2021	2022	The applicant filed a Draft License Application in July 2019; DEP filed comments on the DLA in October 2019. A Final License Application was filed in December 2019. DEP received a WQC application in July 2020 and the Department issued a WQC approval, with conditions, on July 1, 2021. DEP anticipates a new license will be issued by FERC in 2022.
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
November 30, 2022	2530	Hiram		March 2021	March 2022	2023	A final license application was filed in November 2020. A WQC application was received in March 2021 and the Department anticipates issuing a draft WQC for public comment in February 2022 and issuing a final WQC decision by or before March 2022.
August 31, 2022	4784	Pejepscot		June 2021	June 2022	2023	Water quality studies were carried out during the 2018 field season. Additional studies requested by NMFS and the applicant (CFD modeling and sound study) were approved by FERC in October 2020; DEP received a WQC application in June 2021 and anticipates issuing a draft WQC in May 2022 and a final WQC decision in June 2022.
January 31, 2022	2322	Shawmut		October 2021	October 2022	2023	DEP reviewed and provided comment on the draft license application in December 2018; FERC extended the current license term to January 31, 2022. The applicant filed a final license application in January 2020 and a WQC application in August 2020. The Department issued a draft decision (denying certification) on August 11, 2021 for public comment. The WQC application was subsequently withdrawn; the Department received a new WQC application on October 18, 2021. The new WQC application was accepted for processing on October 21, 2021; DEP anticipates issuing a final WQC decision by or before October 2022.

December 31, 2017	2727	Ellsworth*	Graham Lake Dam, Leonard Lake Dam	2022	2023	2023	A WQC application was withdrawn and a new application simultaneously submitted on March 20, 2019. In its reapplication, the applicant modified its proposed operations to address impoundment habitat criteria and proposed to collect additional BMI data. A DEP decision was issued on March 19, 2020 denying certification. That decision was upheld on appeal by the BEP in a decision dated June 3, 2021. On July 6, 2021 the applicant filed a petition with Superior Court for review of the Department's decision. The Project continues to operate via an annual FERC license. The owner has stated it will file a new WQC application for the project in 2022.
March 31, 2024	7189	Green Lake		March 2022	March 2023	2024	The applicant filed a PAD and held a joint agency meeting in fall 2019. Water quality studies were conducted during field season 2020 and results were reported in February 2021. A draft licensing application was filed in November 2021; DEP anticipates a WQC application to be filed in summer 2022.
May 31, 2024	2600	West Enfield		December 2022	December 2023	2024	The applicant filed a PAD and held a joint agency meeting in fall 2019. Water quality studies were conducted during field season 2020. A Draft License Application was filed in January 2022. The DEP anticipates a WQC application will be filed in winter 2022.
July 31, 2023	3562	Upper Barker		July 2022	July 2023	2023	Water quality studies were carried out during the 2018 field season. A Draft License Application was filed in summer 2021 for agency comment. A Final License Application was filed in July 2021, but the Project was found not Ready for Environmental Analysis in August 2021. The Department anticipates a WQC application will be filed in summer 2022.
August 31, 2024	6398	Hackett Mills		October 2022	October 2023	2024	The applicant filed a PAD and held a joint agency meeting in December 2019. Water quality studies were conducted during field season 2020. DEP anticipates a Draft License Application will be filed in February 2022, A Final License Application will be filed no later than August 2022. The DEP anticipates a WQC application will be filed in October 2022.
September 30, 2024	2333	Rumford Falls		November 2022	November 2023	2024	The applicant filed a PAD and held a joint agency meeting in December 2019. Water quality studies were conducted during field season 2020 and 2021; DEP anticipates a Final License application will be filed by September 30, 2022 and a WQC application is anticipated in November, 2022.
September 30, 2023	4293	Lowell Tannery		November 2022	November 2023	2023	Water quality studies were carried out during the 2019 field season. Additional fish studies were requested by the federal fish resource agencies and a study dispute resolution was issued by FERC in 2021 calling for additional fish passage study. The DEP anticipates a Final License Application to be filed with FERC in Spring 2022 and a WQC application in late 2022 following completion of the required studies.
March 31, 2025	4202	Aziscohos		May 2023	May 2024	2025	The applicant filed a PAD and held a joint agency meeting in 2020. water quality studies were conducted in 2021; DEP anticipates the initial study report will be filed in February 2022. A Draft License Application is expected in October 2022 and a Final License Application is expected to be filed in March 2023. DEP expects a WQC application will be filed in Spring 2023.

November 30, 2025	3428	Worumbo		November 2023	November 2024	2025	The applicant filed a PAD in November 2020 and held scoping meetings in February 2021. Water quality studies will be underway in spring/summer 2022.
August 31, 2026	2302	Lewiston Falls		August 2024	August 2025	2026	Applicant filed a PAD in August 2021 and held a joint agency meeting in November 2021. DEP filed study plan requests in January 2022; Water quality studies will be underway in spring/summer 2022.
October 1, 2026	2458	Penobscot Mills	North Twin Dam Millinocket Dolby Dam East Millinocket Millinocket Lake	October 2024	October 2025	2027	Applicant filed a PAD in June 2021 and held a joint agency meeting in September 2021. DEP filed study plan requests in October 2021 and attended a study plan meeting in December 2021. Water quality studies will be underway in spring/summer 2022.
October 1, 2026	2572	Ripogenous		October 2024	October 2025	2027	Applicant filed a PAD in June 2021 and held a joint agency meeting in September 2021. DEP filed study plan requests in October 2021 and attended a study plan meeting in December 2021. Water quality studies will be underway in spring/summer 2022.
November 31, 2026	11132	Eustis		November 2024	November 2025	2027	Applicant filed a PAD in November 2021 and anticipate holding a joint agency meeting in winter 2022. DEP will review the PAD and prepare study plan requests as appropriate.
February 28, 2029	2284	Brunswick		February 2027	February 2028	2029	Anticipate applicant will file a PAD and hold a joint agency meeting in 2022. DEP will review the PAD and prepare study plan requests as appropriate.
March 31, 2029	2666	Medway		March 2027	March 2028	2029	Anticipate applicant will file a PAD and hold a joint agency meeting in 2022. DEP will review the PAD and prepare study plan requests as appropriate.
November 30, 2029	2528	Cataract	East Channel West Channel Springs-Bradbury	November 2027	November 2028	2029	Anticipate applicant will file a PAD and hold a joint agency meeting in 2022. DEP will review the PAD and prepare study plan requests as appropriate.
Other Water Quality Certification Projects							
FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	Anticipated WQC Application Filing Date	Anticipated Department WQC Deadline	Anticipated FERC Relicense Date	Comments
April 30, 2022	4451	Lower Great Falls		April 6, 2021	April 2022	2023	Project located on the Salmon Falls River, which serves as Maine/New Hampshire border. WQC applications were received by DEP and NHDES in March 2021. Power generating components of the Project are located in New Hampshire. NHDES will develop conditions for continued operation of the Project. DEP to coordinate with NHDES; NHDES anticipated to issue a WQC in March 2022.

August 29, 2023	3133	Errol	2023	The applicant filed a PAD and held a joint agency meeting in early 2019. DEP commented on the PAD and prepared study plan requests; water quality studies were carried out during the 2019 and 2020 field seasons. DEP is not the certifying agency for Errol Hydro, as the project discharge is entirely in the state of New Hampshire; however, as a portion of the impoundment lies within the state of Maine. The Department requested certain water quality study parameters be added to the study requested by NHDES and filed comments on impacts of the project operation on resources in Maine. A Final License Application was filed with FERC in July 2021. A WQC application is not expected to be filed with DEP.
Preliminary Permit	14743	Western Passage		A preliminary permit for the project 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 continues to collect environmental data to prepare an application for a Tidal Power Demonstration Project and WQC.
January 31, 2022	12711	Cobscook Bay Tidal Energy Project		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 is decommissioning the shore station and subsea cable, and intends to leave the foundation in place to test additional devices. Any additional testing will not involve interconnection with the grid. Because the project will no longer be tied to the nation's power grid, a WQC will not be required for subsequent work and no WQC application is expected to be filed with DEP.

* 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
- NMFS=National Marine Fisheries Service
- NHDES=New Hampshire Department of Environmental Services
- NOI=Notice of Intent to File (an application)
- ILP=Integrated Licensing Process