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**Report to the Joint Standing Committee on Environment and
Natural Resources
131st Legislature, First Regular Session**

Pending and Anticipated Water Quality Certification Applications for Hydropower Projects

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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.

There are no WQC applications for hydropower relicensing projects currently before the Department for review.

During calendar year 2022, the Department issued four WQC decisions for the following hydropower projects as part of the Federal Energy Regulatory Commission (FERC) relicensing process:

- Hiram Hydroelectric Project - WQC approval issued March 4, 2022; FERC deadline March 11, 2022
- Lower Great Falls Hydroelectric Project - WQC approval issued April 6, 2022; FERC deadline April 6, 2022
- Pejepscot Hydroelectric Project - WQC approval issued June 8, 2022; FERC deadline June 8, 2022
- Shawmut Hydroelectric Project - WQC denial without prejudice issued October 12, 2022; FERC deadline October 17, 2022

The Department anticipates receiving 18 new WQC applications associated with FERC relicensing in the next five years. In addition, the Department is aware of the proposed Western Passage tidal energy project, which has a FERC preliminary permit to study the feasibility of the proposed project.

II. Summary of FERC Relicensing Process

In Maine, there are 124 hydropower dams administered through 94 federal licenses or exemptions authorized by 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 WQC for the project or has waived certification. This process affords the states an opportunity to address the water resource impacts of federal 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 2023-2028

There are currently no WQC applications before the Department.

The Department maintains steps to improve the internal review 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 18 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 – 2023
- Green Lake – 2023
- West Enfield – 2023

- Upper Barker – 2023
- Hackett Mills – 2023
- Rumford Falls – 2023
- Lowell Tannery – 2023
- Shawmut – 2023
- Aziscohos – 2023
- Worumbo – 2023
- Lewiston Falls – 2024
- Penobscot Mills – 2024
- Ripogenus – 2024
- Eustis – 2024
- Brunswick – 2027
- Medway – 2027
- Cataract – 2027
- Lower Kezar Falls – 2028

Appendix A includes a spreadsheet listing all WQC completed in 2022, and 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: WQC Applications Completed in 2022 and Anticipated in
Next Five Years**

Hydropower Licensing Actions Completed in 2022						
FERC License Expiration Date	FERC #	Project / Dam	WQC Application Filing Date	Department WQC Deadline	Licensing Action Completed	Comments
November 30, 2022	2530	Hiram	March 12, 2021	March 11, 2022	2022	The Department issued the final WQC approval on March 4, 2022. The WQC was appealed by the Sebago Chapter of Trout Unlimited on March 31, 2022. The Maine Board of Environmental Protection affirmed the WQC on December 1, 2022.
April 30, 2022	4451	Lower Great Falls	April 6, 2022	April 5, 2022	2022	The project is located on the Salmon Falls River, which serves as Maine/New Hampshire border. Power generating components of the Project are located in New Hampshire. New Hampshire issued its final WQC approval on April 5, 2022 and DEP issued the final WQC approval on April 6, 2022.
August 31, 2022	4784	Pejepscot	June 9, 2021	June 8, 2022	2022	The Department issued the final WQC (approval) on June 8, 2022. The WQC was appealed by Friends of Merrymeeting Bay, Grow L+A, The Downeast Salmon Federation, The Maine Chapter of the Native Fish Coalition, and The Maine Council of Trout Unlimited on July 8, 2022. The appeal is expected to be heard by the Maine Board of Environmental Protection in February 2023.
January 31, 2022	2322	Shawmut*	October 18, 2021	October 20, 2021	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, and the Department received a new WQC application on October 18, 2021. The Department issued a final order (denial without prejudice) on October 12, 2022. The Applicant has challenged the denial without prejudice in State court, but the Department expects that the Applicant will file another WQC application if it wishes to obtain a new FERC license for the project.
Anticipated Hydropower Water Quality Certification Applications in the Next Five Years						
FERC License Expiration Date	FERC #	Project / Dam	Anticipated WQC Application Filing Date	Anticipated Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline

December 31, 2017	2727	Ellsworth*	2023	2024	2024	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. The Department issued a final order on March 19, 2020, denying the WQC application. That decision was upheld on appeal by the BEP in its decision dated June 3, 2021. On July 6, 2021, the applicant filed a petition with Superior Court for review of the BEP's decision. The Department and BEP moved to dismiss the petition and on November 22, 2022, the Superior Court granted the motion to dismiss in part and denied it in part. The case is still pending in Kennebec Superior Court and the project continues to operate via an annual FERC license.
March 31, 2024	7189	Green Lake	March 2023	March 2024	2025	The applicant filed a PAD and held a joint agency meeting in fall 2019. Water quality studies were conducted during the 2020 field season and results were reported in February 2021. A final licensing application was submitted on April 21, 2022, and FERC notified the applicant of deficiencies on June 14, 2022. The Department anticipates a WQC application will be filed in early Spring 2023.
May 31, 2024	2600	West Enfield	May 2022	May 2023	2024	The applicant filed a PAD and held a joint agency meeting in fall 2019. Water quality studies were conducted during the 2020 field season. 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	December 2022	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 Applicant responded to an additional information request in September 2022. The Department anticipates a WQC application will be filed in early 2023.
August 31, 2024	6398	Hackett Mills	August 2022	August 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. A Final License Application was filed in August 2022. FERC requested additional information in November 2022. The Department anticipates a WQC application in Spring 2023.
September 30, 2024	2333	Rumford Falls	September 2022	September 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. A final license application was filed September 2022 and a WQC application is anticipated in March 2023.
September 30, 2023	4202	Lowell Tannery	October 2022	December 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 Final License Application was filed in September 2021, but as of November 2022 the Applicant requested a delay for issuance of the Ready for Environmental Assessment notice. The Department anticipates a WQC application in summer or fall of 2023.

January 31, 2022	2322	Shawmut*	October 18, 2021	October 20, 2021	2022	As noted above, the Applicant has challenged the Department's denial without prejudice in State court, but the Department expects that the Applicant will file another WQC application if it wishes to obtain a new FERC license for the project.
March 31, 2025	4026	Aziscohos	March 2023	March 2024	2025	Water Quality Studies were conducted in 2021 and the initial study report was filed in February 2022. A Draft License Application was filed in November 2022 and the Final License Application is expected in early 2023. The Department anticipates a WQC application in summer or fall of 2023.
November 30, 2025	3428	Worumbo	November 2023	November 2024	2025	Water quality studies occurred in summer 2022, and an Initial Study Report was filed in October 2022. A Revised Study Report with initial findings is anticipated from the Applicant in February 2023 for agency review. The Department anticipates a WQC application in winter 2023.
August 31, 2026	2302	Lewiston Falls	August 2024	August 2025	2026	The 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 occurred in summer 2022. The Initial Study Report is expected in March 2023 and the Department anticipates a WQC application in fall 2024.
October 1, 2026	2458	Penobscot Mills	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 occurred in summer 2022. The Department anticipates a WQC application in fall 2024.
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 occurred in summer 2022. The Department anticipates a WQC application in fall 2024.
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 2023. The Department submitted comments on the PAD and study requests in May 2022.
February 28, 2029	2284	Brunswick	February 2027	February 2028	2029	Anticipate applicant will file a PAD and hold a joint agency meeting in 2023. 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 2023. DEP will review the PAD and prepare study plan requests as appropriate.
November 30, 2029	2528	Cataract	November 2027	November 2028	2029	Anticipate applicant will file a PAD and hold a joint agency meeting in 2023. DEP will review the PAD and prepare study plan requests as appropriate.

September 30, 2030	9340	Lower Kezar Falls	September 2028	September 2029	July 22, 1905	Anticipate applicant will file a PAD and hold a joint agency meeting in 2024. DEP will review the PAD and prepare study plan requests as appropriate.
Other Water Quality Certification Projects						
FERC License Expiration Date	FERC #	Project / Dam				Comments
Preliminary Permit	14743 15285	Western Passage				A preliminary permit for the project was granted by FERC in July 2016. The permit expired on July 1, 2019, and the applicant filed a new preliminary permit application with FERC on August 22, 2022.

* Currently operating under an annual license.

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

PSP=Proposed Study Plan