

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp

Project No. 2337-087 and 091

ORDER AMENDING LICENSE TO INCORPORATE REVISED
SECTION 401 WATER QUALITY CERTIFICATION

(Issued December 18, 2020)

1. On February 10, 2020, PacifiCorp (licensee) filed a request with the Federal Energy Regulatory Commission (Commission) to amend its license for the Prospect No. 3 Hydroelectric Project No. 2337¹ to incorporate a revised Section 401 water quality certification also filed with the Commission on February 14, 2020 by the Oregon Department of Environmental Quality (Oregon DEQ). The project is located on the South Fork Rogue River, in Jackson County, Oregon, near the town of Prospect. The project occupies 32.4 acres of federal land within the Rogue River-Siskiyou National Forest, administered by the U.S. Forest Service.
2. Ordering paragraph (D) of the project license incorporates the Oregon DEQ conditions under Section 401(a)(1) of the Clean Water Act, which are included in Appendix A of the project license. According to the licensee, it filed a challenge with the Oregon DEQ regarding certain certification conditions on February 7, 2019, prior to the new project license being issued. On October 25, 2019, the licensee filed a request for rehearing of the September 27, 2019 License Order requesting that the Commission expressly reserve authority to modify the license, as needed, to reflect any changes in the water quality certification that could occur as a result of its appeal of the water quality certification.
3. By Order on Rehearing, issued January 23, 2020, the Commission granted rehearing and reserved its authority to amend the project license based on the outcome of the administrative and judicial reviews of the water quality certification, and revised ordering paragraph (D) of the project license. On December 31, 2019, the licensee and Oregon DEQ resolved the dispute and on February 6, 2020, Oregon DEQ issued a revised certification and associated conditions. Accordingly, the licensee is requesting that the project license be modified to conform to the new conditions issued by the Oregon DEQ

¹ Order Issuing New License (168 FERC ¶ 62,175), issued September 27, 2019.

on February 6, 2020 and filed with the Commission on February 14, 2020. Specifically, the requirements under existing conditions 4(i) and 4(j) have been omitted, and condition 4(e) has been revised in the new certification.

4. As a result of the licensee's state-level challenge regarding certain conditions in Oregon DEQ's Section 401 water quality certification included in the project license, Oregon DEQ has revised its certification. Accordingly, the licensee's request is consistent with the Commission's January 23, 2020 Order on Rehearing and therefore, its request to amend its license to include Oregon DEQ's revised conditions under Section 401(a)(1) of the Clean Water Act, should be approved.

The Director orders:

(A) PacifiCorp's (licensee), February 10, 2020 request to amend the license for the Prospect No. 3 Hydroelectric Project No. 2337 to incorporate the revised Section 401 Water Quality Certification, filed with the Federal Energy Regulatory Commission (Commission) by the Oregon Department of Environmental Quality on February 14, 2020, is approved.

(B) Appendix A, attached to this order, incorporates the Oregon Department of Environmental Quality's revised Section 401 Water Quality Certification filed with the Commission on February 14, 2020 and replaces the Appendix A of the September 27, 2019 Order Issuing New License.

(C) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2018), and the Commission's regulations at 18 C.F.R. § 385.713 (2020). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Erich G. Gaedeke
Aquatic Resources Branch
Division of Hydropower Administration
and Compliance

APPENDIX A

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY REVISED CLEAN WATER ACT SECTION 401 CERTIFICATION CONDITIONS, FILED FEBRUARY 14, 2020

Prospect No. 3 Hydroelectric Project FERC Project No. 2337

Upon Federal Energy Regulatory Commission (FERC) issuance of a license for the Prospect 3 Hydroelectric Project (Project), PacifiCorp must comply with the following § 401 Certification conditions:

I. Project Operation

- a. Throughout the life of the FERC license, PacifiCorp must continue to run the Prospect 3 hydroelectric Project in “run-of-river” mode with a maximum diversion of 150 cubic feet per second from the South Fork Rogue River. In accordance with applicable law, PacifiCorp shall notify DEQ if FERC authorizes modification to these operations so as to allow DEQ to determine whether such changes may affect compliance with water quality standards.

II. Dissolved Oxygen

- a. Within 90 days of FERC License issuance, PacifiCorp shall submit a Dissolved Oxygen Monitoring Plan to DEQ, which addresses the dissolved oxygen monitoring and reporting requirements presented below. Upon DEQ approval, PacifiCorp shall submit to FERC this Monitoring Plan as part of the required § 401 Certification Conditions for the Project for the purposes of any federal license or permit.
- b. At a minimum the dissolved oxygen monitoring plan shall contain the following:
 - i. Identification of monitoring locations. PacifiCorp shall monitor at locations that are representative of dissolved oxygen levels in the South Fork Rogue River above and below the diversion dam.
 - ii. PacifiCorp shall measure dissolved oxygen, percent saturation, temperature and flow in the Project at monitoring locations in the South Fork Rogue River above and below the diversion dam. Dissolved oxygen shall be measured continuously at a minimum interval of one hour from April 1

through July 31 of the first project year of new project operations.

- iii. The Dissolved Oxygen Monitoring Plan shall describe the equipment, calibration procedures, monitoring methods, monitoring locations, and frequency of monitoring necessary to quantify the effects of project operations on dissolved oxygen.
- c. PacifiCorp shall implement the Dissolved Oxygen Monitoring Plan in accordance with DEQ's approval.
- d. Dissolved Oxygen Reporting:
 - i. Subject to this section II.e.ii, PacifiCorp shall submit annual water quality monitoring reports to DEQ by January 31 of each year. Each report shall include an analysis of dissolved oxygen monitoring data from each station including graphical representation of daily minimum, maximum, and average temperature measurements. To evaluate dissolved oxygen data with the applicable criteria given in Table 21 of OAR 340-041-0016, PacifiCorp shall also present data as 7-day mean minimum (7D).
- e. Dissolved Oxygen Adaptive Management Plan:
 - i. If DEQ determines monitoring indicates the project is causing or contributing to a violation of the dissolved oxygen criteria, PacifiCorp shall develop and propose measures to address the dissolved oxygen deficit as part of an adaptive management plan. PacifiCorp shall develop and submit to DEQ an adaptive management plan to ensure that project does not cause or contribute to a violation of the dissolved oxygen criteria. Following DEQ approval, PacifiCorp shall implement the plan in accordance with DEQ's approval.
 - ii. If DEQ determines monitoring demonstrates that the project does not cause or contribute to a violation of dissolved oxygen criteria, then DEQ may allow PacifiCorp to cease monitoring for a period of time or for the remaining term of the license.

III. Total Dissolved Gas

- a. Following FERC License issuance, PacifiCorp shall submit annual water quality monitoring reports to DEQ by January 31 of each year summarizing the frequency of spill events to Daniels Creek. Following DEQ review of the annual report, DEQ may request PacifiCorp meet with DEQ to discuss the spill events.

- b. Following the meeting, if requested by DEQ, PacifiCorp shall submit a Total Dissolved Gas Monitoring Plan to DEQ, which addresses the total dissolved gas monitoring and reporting requirements presented below. Upon DEQ approval, PacifiCorp shall submit to FERC this Monitoring Plan as part of the required § 401 Certification Conditions for the Project for the purposes of any federal license or permit. At a minimum PacifiCorp shall measure total dissolved gas in Daniels Creek and Middle Fork Rogue River during an overflow or other non-routine discharge of diverted flows via the forebay and tailrace spillways to Daniels Creek and the Middle Fork Rogue River.
- c. The monitoring plan shall include the following minimum components:
 - i. Proposed data collection procedures including description of equipment and methods.
 - ii. Identification of monitoring locations.
 - iii. Proposed evaluation procedures.
- d. PacifiCorp shall implement the Total Dissolved Gas Monitoring Plan in accordance with DEQ's approval.
- e. Total Dissolved Gas Reporting:
 - i. Subject to this section III.f.ii, PacifiCorp shall submit annual water quality monitoring reports to DEQ by January 31 of each year.
- f. Total Dissolved Gas Adaptive Management Plan:
 - i. If DEQ determines monitoring indicates the total dissolved gas criteria are not met, PacifiCorp shall develop and propose measures to address the total dissolved gas criteria exceedance as part of an adaptive management plan. PacifiCorp shall develop and submit to DEQ an adaptive management plan to ensure that project does not cause or contribute to a violation of the total dissolved gas criteria. Following DEQ approval, PacifiCorp shall implement the plan in accordance with DEQ's approval.
 - ii. If DEQ determines monitoring demonstrates that the total dissolved gas criteria are met, then DEQ may allow PacifiCorp to cease monitoring for a period of time or for the remaining term of the license.

IV. Biological Criteria; Statewide Narrative Criteria; Protection of Designated Beneficial Uses; Antidegradation; Compliance with Other Appropriate Requirements of State Law

- a. Within 180 days of FERC License issuance, PacifiCorp shall submit a Macroinvertebrate Monitoring Plan to DEQ that addresses the macroinvertebrate monitoring and reporting requirements presented below. Upon DEQ approval, PacifiCorp shall submit to FERC this Monitoring Plan as

- part of the required § 401 Certification Conditions for the Project for the purposes of any federal license or permit. At a minimum, PacifiCorp shall include the following components in the monitoring plan:
- i. A description of an appropriate sampling technique for macroinvertebrate monitoring below the diversion dam, which shall include standard bioassessment metrics including densities, abundance, richness and tolerance.
 - ii. Identification of monitoring locations below the diversion dam, which shall include, at a minimum, two sampling locations in the South Fork Rouge River between the diversion dam release point and river mile 7.
 - iii. Identification of the frequency of macroinvertebrate monitoring below the diversion dam, which shall include proposed sampling from mid to late summer.
- b. PacifiCorp shall implement the Macroinvertebrate Monitoring Plan in accordance with DEQ's approval.
- c. Macroinvertebrate Reporting:
- i. Subject to this section IV.d.ii, PacifiCorp shall submit annual monitoring reports to DEQ by January 31 of each year.
- d. Macroinvertebrate Adaptive Management Plan:
- i. If DEQ determines monitoring indicates the resident biological community below the diversion dam is impaired or in poor condition based on comparison of the standard bioassessment metrics to the monitoring results, PacifiCorp shall develop and propose measures to address compliance with the biocriteria standard as part of an adaptive management plan. PacifiCorp shall develop and submit to DEQ an adaptive management plan to ensure that the project does not cause or contribute to a violation of biocriteria standard. Following DEQ approval, PacifiCorp shall implement the plan in accordance with DEQ's approval.
 - ii. If DEQ determines monitoring demonstrates that the resident biological community below the diversion dam is in fair or good condition, then DEQ may allow PacifiCorp to cease monitoring for a period of time or for the remaining term of the license.
- e. PacifiCorp shall discharge a continuous minimum flow from the Project diversion dam into the South Fork Rogue River. The minimum flow released to the South Fork Rogue River shall be equal to or greater than 30 cubic feet per second from March 1 through July 31 and equal to or greater than 20 cubic feet per second from August 1 through February 28 as measured at the United States Geological Survey gage at RM 10.25. If natural inflow to the Project is

- less than the minimum flow requirement, then all the flow will be discharged into the bypass reach.
- f. PacifiCorp shall implement an operational ramping rate of 0.2 foot per hour all year.
 - g. Ramping Rate Reporting:
 - i. PacifiCorp shall report any operational ramping rates in excess of 0.2 foot per hour within 24 hours of discovery to DEQ and ODFW via electronic mail.
 - ii. PacifiCorp shall submit an annual report to DEQ and ODFW by January 31 of each year summarizing the frequency of operational ramping events exceeding 0.2 foot per hour. PacifiCorp shall meet annually with DEQ and ODFW to discuss the frequency of operational ramping events exceeding 0.2 foot per hour.
 - h. Ramping Rate Adaptive Management Plan:
 - i. If requested by DEQ, PacifiCorp shall develop and submit to DEQ an adaptive management plan to reduce the frequency of operational ramping events exceeding 0.2 foot per hour. PacifiCorp shall implement this plan in accordance with DEQ's approval.
 - i. Within 18 months of FERC license issuance, PacifiCorp must update the Fish Passage Facilities Operations and Maintenance Plan, which must include among other components, the design, operation, and construction of an auxiliary bypass flow system.
 - j. After approval of the Fish Passage Facilities Operations and Maintenance Plan, PacifiCorp shall operate and maintain the fish passage facilities in accordance with the approved terms of that Plan, including but not limited to the operation of the auxiliary bypass flow system.
 - k. PacifiCorp shall integrate its obligations set forth in this section into any plans, proposals, or proposed activities for review by other government agencies.

V. General Conditions:

- a. **Implementation:** PacifiCorp must provide DEQ evidence that PacifiCorp has received all required permits and approvals before Project construction activities commence.
- b. **§ 401 Certification Modification:** Without limiting DEQ's discretion to take other actions in accordance with 33 USC 1341, DEQ may modify the Certification to add, delete, or modify Certification conditions as authorized by OAR 340-048-0050.
- c. **Project Changes.** PacifiCorp shall notify DEQ of any change in ownership, scope, or operation of the Project. PacifiCorp shall obtain DEQ's review and approval before undertaking any such change to the Project, including but not

limited to changes to Project structures, construction, operations, and flows, which, among other changes, may potentially affect water quality.

- d. **Project Repair or Maintenance.** PacifiCorp shall obtain DEQ's review and approval before undertaking Project repair or maintenance activities that may potentially affect water quality (other than repair or maintenance activities authorized by the new FERC license). DEQ may, at PacifiCorp's request, approve specified repair and maintenance activities on a periodic or ongoing basis.
- e. **Project Inspection.** PacifiCorp shall allow DEQ such access as necessary to inspect the Project area and Project records required by this Certification at reasonable times as necessary to monitor compliance with § 401 Certification conditions.
- f. **Posting of § 401 Certification.** PacifiCorp shall post a copy of these Certification conditions in prominent locations at the Project Powerhouse.
- g. **Water Quality Standards Compliance.** Notwithstanding the conditions of this Certification, no wastes shall be discharged and no activities shall be conducted which will violate state water quality standards.
- h. **Conflict Between Certification Conditions and Application.** To the extent that there are any conflicts between the terms and conditions in this Certification and how activities, obligations, and processes are described in the Application, the terms and conditions in this Certification, as interpreted by DEQ, shall control.
- i. **Project Specific Fee.** PacifiCorp shall pay the project-specific fee as required by applicable law and in the manner and amount as particularly described in Exhibit A, which is incorporated here in its entirety by this reference.