



Oregon

Kate Brown, Governor

Department of Environmental Quality
Agency Headquarters
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5696
FAX (503) 229-6124
TTY 711

October 8, 2021

Sent via electronic mail to Pirzadeh.Michelle@epa.gov

Ms. Michelle Pirzadeh, Regional Administrator
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
M/S ECL-122, Seattle WA 98101-3188

RE: Oregon's Objection Pursuant to Section 401(a)(2) to Permits for Bonneville Project, WA0026778, The Dalles Lock and Dam, WA0026701, John Day Project, WA0026832, and McNary Lock and Dam, WA0026824

Dear Ms. Pirzadeh,

EPA notified Oregon Department of Environmental Quality (DEQ) on March 17, 2020, it intends to issue National Pollutant Discharge Elimination System (NPDES) permits for the above listed facilities, which discharge pollutants to the Columbia River. The EPA determined the proposed permits may affect the quality of waters in the State of Oregon. In recognition of the requirements of §401(a)(2) of the Clean Water Act (CWA), EPA notified DEQ of this action and provided the draft NPDES permits for DEQ review simultaneously to requesting certification from the State of Washington. On May 15, 2020, DEQ notified EPA of its objection to the draft NPDES permits based on a determination that the discharge will affect the quality of Oregon's waters and violate state water quality requirements.

EPA accepted public comment on the draft permits from January 15 through February 16, 2021. Since the time of DEQ's objection, EPA issued the temperature Total Maximum Daily Loads (TMDL) for the Columbia River on May 18, 2020 and issued a subsequent version August 13, 2021, after taking public comment. On July 26, 2021, EPA provided DEQ a recent draft of the Bonneville Dam permit which included CWA §401 certification conditions from the Washington Department of Ecology.

Objection

DEQ has reviewed the draft NPDES permit for the Bonneville Project, and DEQ understands similar revisions, including adding Washington Department of Ecology's conditions, are being made to the other three permits referenced in the subject line of this letter. DEQ has determined that the requirements in the draft NPDES permit for the Bonneville Project will result in compliance with Oregon's water quality standards for total dissolved gas, biocriteria

and statewide narrative criteria and numeric criteria for PCBs¹. However, in accordance with CWA §401(a)(2), DEQ has determined that the discharge will affect the quality of Oregon's waters and will not ensure compliance with all of Oregon's water quality requirements. Specifically, DEQ has determined that the requirements included in the draft permit will not assure attainment of Oregon's water quality standards for temperature. DEQ is therefore reiterating its objection to the issuance of the draft permit and its request for a public hearing.

The Columbia River is water quality limited for temperature (as documented in Oregon's 2018/2020 Integrated Report and in EPA's recently issued TMDL) through the entire length of its border with the State of Washington due to exceedances of the migration corridor temperature criteria of 20°C, typically in the period between late July through late September. In addition, EPA's TMDL indicates that the cumulative heat loading from dam impoundments, in many areas, exceeds the full loading capacity (0.3°C) by a substantial margin (at all times of the year).

As noted in Oregon DEQ's May 2020 objection letter, DEQ requested that EPA incorporate any necessary conditions for TMDL implementation associated with the dams into the NPDES permits. At that time, DEQ was asked to evaluate a draft permit that had yet to be subject to public comment. DEQ did not have the benefit of being able to consider the subsequent TMDL as it had not yet been issued, so the May 2020 DEQ objection was limited. The TMDL has since been issued, and DEQ now has had the opportunity to review the conditions EPA proposes to include in the final permit. DEQ notes that the draft NPDES permit includes 401(a)(1) conditions from the Washington Department of Ecology which require the Corps to implement temperature control strategies and meet the load allocations in the Columbia and Lower Snake Rivers Temperature. Oregon DEQ appreciates these conditions, and Oregon and Washington are leading the development of their respective water quality management plans to implement EPA's Columbia River temperature TMDL, working in collaboration with EPA. NPDES permits and Section 401 water quality certifications containing conditions to ensure compliance with waste load allocations are a necessary piece of what is required for TMDL implementation to meet federal requirements.

Nevertheless, Oregon DEQ has determined that including only a general requirement to meet the load allocations in the Columbia River temperature TMDL is insufficient for Oregon to conclude that the permit requirements and conditions will attain the State of Oregon's water quality standards for temperature.

As a downstream state that is not administering the permit, Oregon needs the permit to contain additional specificity to ensure that its water quality standards will be achieved. To date, the actions that the United States Army Corps of Engineers (USACE) has taken to address high temperatures in the mainstem of the Columbia, particularly during the late summer and early fall, have been inadequate and have not resulted in necessary progress toward achieving water quality standards or meeting TMDL load allocations. These concerns are exacerbated by

¹ DEQ's determination regarding PCBs does not consider any prior or ongoing releases from Bradford Island.

current trends toward regional drought and lower flows during this time of the year. Absent conditions compelling USACE to identify, evaluate, and adopt additional specific alternatives for reducing thermal loads in its operation of these facilities, Oregon does not have an adequate assurance that the requirements will attain Oregon's water quality standards for temperature.

Proposed Supplemental Conditions:

EPA's incorporation of the following conditions into the permits would provide the necessary assurance of compliance with Oregon's water quality requirements for temperature. Alternative language to these conditions could be acceptable to Oregon DEQ, but some form of the analysis and evaluation provided for in these proposed conditions is necessary in order to make significant progress toward meeting Oregon's water quality requirements.

- I. Initial Study of Temperature.
Impacts of Facility Operations. Within the first year of receipt of the NPDES permit for the Bonneville Project² USACE shall study alternative actions to reduce thermal loading resulting from the operation of the facility. The study shall focus particularly on water temperatures during the period from July 15 to September 30, but also shall include analysis for other times of the year that are during key periods of salmonid migration. Such actions must include, but are not limited to, changes in operating pools during this period (limited by minimum operating pool). USACE must submit the results of that analysis to EPA, Washington Ecology, and Oregon DEQ within this one-year period. With regard to changes in operating pools, the study shall include, but is not limited to, the following components:
 - A. An estimate of how much the surface area of the reservoir would change when operating the reservoir at the Minimum Operating Pool;
 - B. An analysis of how the reduction in surface area and reduction of water residence time in the reservoir would affect discharge temperatures;
 - C. An analysis of the extent to which changes in reservoir pool elevations would affect the frequency, duration, and magnitude of state water quality standards exceedances in the lower Columbia River; and
 - D. An analysis of operational tradeoffs resulting from lower operating pools, and whether such changes would significantly impair other goals, including, but not limited to:
 - i. The ability of USACE to meet operational needs for congressionally authorized purposes.
 - ii. The potential effects of such changes on USACE's ability to meet other federal requirements, including requirements under the federal Endangered Species Act for spill.
- II. Development and Submission of an Implementation Plan. Within one year of submitting the Initial Study of Temperature Impacts, USACE must develop and submit to EPA, the Washington Department of Ecology and Oregon DEQ an

² Oregon DEQ's expectation is that a similar condition will be included in the permit for each of the four facilities that are the subject of this objection.

- implementation plan (for EPA's review and approval). The Implementation Plan must include a timeframe and milestones for implementing actions that EPA, Washington Ecology and Oregon DEQ have agreed will provide substantial improvements to thermal conditions without impairing other requirements that USACE must meet in operating the facility. The Implementation Plan must include:
- A. Provisions for adequate monitoring of water temperature over the term of the permit.
 - B. Provisions for evaluating the thermal benefits achieved and any resultant effects from the change in operations.
- III. Following EPA review and approval, USACE will carry out the implementation plan, and will provide regular reporting to EPA, Washington Ecology and Oregon DEQ regarding changes in thermal loading resulting from the plan.

Oregon expects these permits to meet federal requirements for complying with applicable water quality standards and TMDL load allocations for temperature in the mainstem Columbia River. These requirements are in place to protect fish and aquatic life populations in the river. EPA must incorporate more specific requirements for the development and implementation of actions to reduce temperature increases resulting from the operation of this facility in order to ensure that applicable Oregon's water standards are met. DEQ looks forward to hearing from EPA on its §401(a)(2) objection. If you have any questions or would like more information, please contact Jennifer Wigal at Jennifer.Wigal@deq.state.or.us.

Sincerely,



Richard Whitman
Director

cc: Dan Opalski, Director, EPA Water Division Region 10, opalski.dan@epa.gov