

Clean Water Act § 401 Certification Conditions

For the Mason Dam Hydroelectric Project

(FERC No. P-12686)

Powder River Basin

Baker County, Oregon

May 6, 2014

Upon Federal Energy Regulatory Commission (FERC) issuance of a license for the Mason Dam Hydroelectric Project (Project), Baker County must comply with the following § 401 Certification conditions:

- 1) Project Operation: Throughout the life of the FERC license, Baker County must operate its hydroelectric facility in a “run-of-release” mode. Baker County will neither cause deviation from requirements dictated by the Bureau of Reclamation (Reclamation) or the Baker Valley Irrigation District (BVID) for magnitude, frequency, and ramping rates of stream flow, nor adversely impact Reclamation’s management of water discharged from Mason Dam. Baker County must enter into an agreement with Reclamation to coordinate transfer of flows between Reclamation, BVID and the Project in a manner which achieves Reclamation’s and BVID’s flow objectives.

- 2) Monitoring Dissolved Oxygen and Total Dissolved Gas:
 - a) Within ninety (90) days of issuance of the FERC license, Baker County, in consultation with the Oregon Department of Environmental Quality (DEQ), must, as necessary to ensure consistency with these § 401 Certification Conditions, revise the Dissolved Oxygen Compliance Plan attached to these § 401 Certification Conditions as Exhibit A and submit the revised plan for DEQ approval as the Project Water Quality Monitoring and Management Plan (WQMMP). Upon approval, the WQMMP becomes part of these § 401 Certification Conditions for the Project for the purposes of any federal license or permit.

The WQMMP must include: applicable dissolved oxygen (DO) and total dissolved gas (TDG) criteria; monitoring methodology; reporting schedule; air admission procedures; and procedures for suspending operation during DO or TDG violations in

accordance with Condition 2b. Baker County must measure DO at the downstream gage location (USBR gage PHL) continuously during Project operations. Baker County must download and evaluate DO data on a weekly basis. During Project operation, Baker County must also measure TDG in the Project Tailrace and at the USBR gage PHL for a minimum of seventy-two (72) hours under minimum flow and maximum flow conditions. Concurrent with DO and TDG measurements, Baker County must also record flow and water temperature at the USBR gage PHL, as well as record power generation from the Project. Baker County must report all DO, TDG, flow, water temperature and power generation data to DEQ within ninety (90) days of the end of each hydropower operating season, or December 30, whichever comes first.

- b) If it is determined that Project operations are contributing to downstream violations of the applicable DO standard, TDG standard or the Antidegradation standard, Baker County must follow the procedures in the WQMMP, including project shutdown, as necessary. If taking the actions described in the WQMMP do not correct the problem and allow water quality standards to be achieved, Baker County must consult with DEQ to evaluate whether any modifications to the Project or Project operations can mitigate the impacts to water quality. If DEQ determines that such modifications can reverse such impacts, Baker County must propose the modifications to DEQ, and following DEQ's approval, Baker County must implement the approved modifications. Baker County may operate the Project during the development and implementation of modifications if conditions allow water quality standards to be met.
- c) The WQMMP must include provisions to address water quality monitoring equipment malfunctions. The WQMMP must include the following:
 - i. Procedures and measures that will be implemented to prevent monitoring equipment malfunctions;
 - ii. Procedures for identifying the occurrence and nature of any monitoring equipment malfunctions that may occur;
 - iii. Plan, schedule, and corrective measures that will be implemented to address monitoring equipment malfunctions;

- iv. Procedures for notifying DEQ of the occurrence and nature of monitoring equipment malfunctions, corrective measures implemented, and recommencement of monitoring equipment operation.
- v. Procedures and timelines for Project shutdown as may be necessitated by monitoring equipment malfunctions;
- vi. Plan and schedule for maintenance and calibration of field test equipment.

Baker County must notify DEQ within twenty-four (24) hours in the event of monitoring equipment failure. Upon evaluation of the situation, DEQ may direct Baker County to suspend operation of the Project until monitoring equipment may be repaired or replaced. DEQ may condition its authorization to restart the facility on a review of the response to the malfunction which provides DEQ with reasonable assurance that an adequate remedial solution has been implemented.

3) Protection of Beneficial Uses; Compliance With Other Requirements of State Law: Baker County must implement mitigation measures in lieu of fish screening and passage in accordance with the Fish Screening Exemption and the Fish Passage Waiver for the Mason Dam Project that were signed by the Oregon Department of Fish and Wildlife on February 7, 2014, and signed by Baker County on February 12, 2014. These documents are included as Appendix C of the Agreement in Principal (AIP) for the Project.

4) Erosion and Sediment Control Plan:

a) During construction of the Project, Baker County must follow the Erosion and Sediment Control Plan included in Appendix C of the Clean Water Act § 401 Water Quality Certification Application submitted to DEQ on May 28, 2013 or future DEQ-approved revisions of that plan. Baker County must also obtain a NPDES 1200C stormwater permit as applicable, during construction and other ground disturbance activities.

b) In-Water Work

For projects that require in-water work, Baker County must obtain, as applicable, a removal-fill permit from Oregon Department of State Lands, a dredge and fill permit from the U.S. Army Corps of Engineers pursuant to Clean Water Act §404 and a Clean Water Act §401 water quality certification from DEQ. In-water work that could potentially create an artificial obstruction to native migratory fish, as defined by OAR 635-412-0005(3) and (32), respectively, such as rock weirs, must meet Oregon

Department of Fish and Wildlife fish passage criteria under OAR 635-412-0035.

- 5) Hazardous Substances Spill Prevention and Cleanup Plan: Baker County must implement and maintain the Hazardous Substances and Spill Prevention and Cleanup Plan included in Appendix D of the Clean Water Act § 401 Water Quality Certification Application submitted to DEQ on May 28, 2013 or future DEQ-approved revisions of that plan. In the event of a spill or release or threatened spill or release to the Powder River, Baker County must immediately implement the plan and notify Oregon Emergency Response System (OERS) at 1-800-452-0311.
- 6) Bypass Flow Plan: Baker County must implement and maintain the Bypass Flow Plan included in Appendix F of the Clean Water Act § 401 Water Quality Certification Application submitted to DEQ on May 28, 2013 or future DEQ-approved revisions of that plan.
- 7) General Conditions:
 - a) Implementation: Baker County must provide DEQ evidence that Baker County has received all required permits and approvals before Project construction.
 - b) § 401 Certification Modification: Without limiting DEQ's discretion to take other actions in accordance with OAR Chapter 340, Division 48, and, as applicable, 33 USC 1341, DEQ may modify the Certification to add, delete, or modify Certification conditions as necessary and feasible to address:
 - i. Adverse or potentially adverse Project effects on water quality or designated beneficial uses that did not exist or were not reasonably apparent when this Certification was issued;
 - ii. TMDLs;
 - iii. Changes in water quality standards;
 - iv. Any failure of Certification conditions to protect water quality or designated beneficial uses when the Certification was issued; or
 - v. Any change in the Project or its operations that was not contemplated by this Certification that might adversely affect water quality or designated beneficial uses.

c) Other Federal Permits: Upon applying for any federal license or permit authorizing a discharge to waters of the United States other than the new FERC license, Baker County must provide written notice of such application and of any proposed changes or new activity requested to be authorized under the application since issuance of this § 401 Certification. DEQ will notify Baker County and the applicable federal agency either that: (1) this § 401 Certification is sufficient for purposes of the federal license or permit; or (2) in light of new information related to the activity requested to be authorized under the application that could result in water quality impacts, there is no longer reasonable assurance of the activity's compliance with state water quality standards. In the latter event, DEQ will consider the new information, solicit and consider public and agency comment as required by law, and issue a 401 certification determination for purposes of the federal license or permit.

d) Project Changes: Baker County must notify DEQ of any change in ownership or to the Project, including changes to Project structures, construction, operations, and flows. Baker County must obtain DEQ review and approval before undertaking any such changes to the Project that might affect water quality (other than changes authorized by the new FERC license required by or considered in the §401 Certification).

e) Project Repair or Maintenance: Baker County must obtain DEQ review and approval before undertaking Project repair or maintenance activities that might affect water quality (other than repair or maintenance activities authorized by the new FERC license required by or considered in this §401 Certification). DEQ may, at Baker County's request, approve specified repair and maintenance activities on a periodic or ongoing basis.

f) Project Inspection: Baker County must 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.

g) Posting of § 401 Certification: Baker County must post a copy of these certification conditions in a prominent location in the Mason Dam Powerhouse.

h) Water Quality Standards Compliance: Notwithstanding the conditions of this certification, no wastes will be discharged and no activities will be conducted which will violate state water quality standards.

i) Project-Specific Fees: In accordance with ORS 543.080, Baker County must pay a Project-specific fee for DEQ's costs of overseeing implementation of the conditions of this Certification as follows:

Project-Specific Fee

To implement the conditions of this Certification, Baker County must pay project-specific fees of \$4,000 during each of the first five (5) years beginning July 1 of each year following issuance of a FERC License in 2013 dollars adjusted according to the formula below, made payable to State of Oregon, Department of Environmental Quality.

Adjustment

Fee amounts must be adjusted annually, according to the following formula:

$$AD = D \times (CPI-U)/(CPI-U-June 2012)$$

Where:

AD = Adjusted dollar amount payable to agency.

D = Dollar amount pursuant to Project Specific Fee above,

CPI-U = the most current published version of the Consumer Price Index-Urban. The CPI-U is published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted by written agreement between DEQ and Baker County.

Payment Schedule

Fees must be paid pursuant to a written invoice from DEQ. Except as provided below, project-specific fees will be due on July 1 of each year following issuance of a FERC License. Baker County must pay an initial prorated payment to DEQ within thirty (30) days of license issuance, for the period from the date of license issuance to the first June 30 which follows license issuance.

Credits

DEQ will credit against this amount any fee or other compensation paid or payable to DEQ, directly or through other agencies of the State of Oregon, during the preceding year (July 1 to June 30) for DEQ's costs of oversight.

Expenditure Summary

DEQ shall, on a biennial basis, provide Baker County with a summary of project-specific expenditures.

Duration

Baker County will pay a Project-specific fee following FERC license issuance and for five (5) years after the first July 1 following post-test commencement of commercial power generation, unless DEQ terminates it earlier because oversight is no longer necessary. One year before the expiration of the fee, or earlier if mutually agreed, DEQ and Baker County shall review the need, if any, to modify, extend, or terminate the fee, in accordance with ORS 543.080. Baker County must pay any project-specific fee required after such review as provided in ORS 543.080.

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Linda Hayes-Gorman
DEQ Eastern Region Administrator

Date