

May 4, 2020

US Environmental Protection Agency, Region 10

Jennifer Wu

[Wu.Jennifer@epa.gov](mailto:Wu.Jennifer@epa.gov)

*Submitted electronically*

**RE: Draft NPDES permits at the four Lower Columbia and four Lower Snake Rivers Dams**

Dear Ms. Wu:

The Public Power Council (PPC) appreciates this opportunity to comment on EPA's draft National Pollutant Discharge Elimination System (NPDES) permits at eight federal hydro facilities on the Lower Columbia and Lower Snake Rivers. The draft NPDES permits would authorize discharges from cooling water, equipment, floor drains, sumps, facility maintenance water, and other miscellaneous discharges. These individual permits are:

- Ice Harbor Lock and Dam, NPDES Permit No. WA0026816
- Lower Monumental Lock and Dam, NPDES Permit No. WA0026808
- Little Goose Lock and Dam, NPDES Permit No. WA0026786
- Lower Granite Lock and Dam, NPDES Permit No. WA0026794
- Bonneville Project, NPDES Permit No. WA0026778
- The Dalles Lock and Dam, NPDES Permit No. WA0026701
- John Day Project, NPDES Permit No. WA0026832
- McNary Lock and Dam, NPDES Permit No. WA0026824

*Public Power Council*

PPC represents the non-profit, community-owned public utility customers that have statutory priority to purchase at cost the output of the Federal Columbia River Power System (FCRPS) from the Bonneville Power Administration (BPA).

BPA's wholesale power customers depend on hydropower from the federal system to serve the residents of the Northwest with affordable, reliable, carbon-free power at cost. The wholesale power rates paid by Northwest public power recover the costs of the

FCRPS, including extensive fish and wildlife mitigation programs throughout the region, and costs related to reporting and monitoring of effluent as covered in the NPDES permits.

#### *Scope of NPDES Permits*

PPC is supportive of monitoring and reporting that measurably maintains or improves the water quality of the Columbia River System due to hydro facility effluent, without being unduly burdensome or overextending the intended scope and purpose of the related permits or certifications. In this context, the NPDES permits should be limited to the material impacts of pollutant effluent discharges that result from dam operations. As they are currently written, the draft NPDES permits over-extend EPA's jurisdiction and the purpose of the NPDES permits in ways that are unduly burdensome and could result in loss of adaptive management capability or could conflict with other agreements and obligations.

EPA's own analyses, as well as measurements and analysis in accordance with other reporting mandates, indicate that processes at these federal facilities and the resulting effluent have little to no impact on parameters such as temperature, pH, Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), and Chemical Oxygen Demand (COD). Monitoring and reporting for these is burdensome and should be excluded from the final permits. Monitoring and reporting for oil and grease should be practicable and reasonable, and EPA should work with the Corps to determine appropriate conditions for these. Finally, any power, turbine operating, or other conditions related to the Clean Water Act 316(b) are covered by the Endangered Species Act and are outside the scope and purpose of these permits and EPA's regulatory authority.

#### *Clean Water Act section 316(b)*

PPC shares the National Hydropower Association and American Public Power Association's concerns regarding the misapplication of section 316(b) to hydro facilities. Notwithstanding this issue, PPC believes that EPA's inclusion of technologies and practices beyond the Cooling Water Intake Structure (CWIS), such as turbine efficiency and fish passage structures, to satisfy 316(b) requirements, is inappropriate. As such, Section II(E)(2)(a-e) should be removed from the final permits.

Any impact to fish and other organisms from water passing through the dams is already regulated, monitored, and managed through the Endangered Species Act, the Pacific Northwest Electric Power Planning and Conservation Act of 1980 and other relevant statutes. Existing documents and protocols have been developed through extensive stakeholder engagement, scientific analysis, and thorough review. Inclusion of conditions that extend beyond the CWIS and overlap with these and other regulations

exceed EPA's regulatory authority, are redundant, and could negatively impact the operations and adaptive management of the dams for their multiple authorized purposes.

#### *Four-Factor Test and Application of Best Professional Judgement*

EPA's Fact Sheets for these permits note the ambiguity of 316(b) rules with respect to hydropower, and in response, EPA staff have come up with a four-factor test and application of "Best Professional Judgment" to determine compliance with 316(b)<sup>1</sup>. While this four-factor test is an understandable attempt to create a middle-ground and alternate compliance path, as applied, it over-extends EPA's authority and results in inappropriate conditions being placed on the dams.

A facility which satisfies any one of the factors in the four-factor test should meet the "Best Technology Available" requirement and be considered compliant. This application of the proposed test is reasonable given the purpose of the 316(b) statute and the nature of hydro CWIS impacts; 316(b) is intended to minimize the adverse impacts of the CWIS to fish and aquatic organisms, and hydro facility CWIS impacts are typically minimal. Satisfying one factor, such as the percentage of water volume withdrawn for CWIS relative to total waterbody flow, should be sufficient to show that a facility's CWIS presents a de minimis impact to fish and other organisms and constitutes the "Best Technology Available" for cooling.

Hydro facilities do not use water for cooling in the same way as thermal generation facilities do, so the design, purpose, and scale of hydro CWIS are materially different from those of thermal plants; as well, the resulting impact from hydro CWIS to aquatic life is minimal. The size of the CWIS for hydropower facilities is insignificant in comparison to the overall size of the penstock and scroll case, and CWIS account for a minimal amount of river flows for the federal dams to which these permits apply. Similarly, when considering the amount of power generated compared to the volume of water drawn through the CWIS, as suggested by factor one, hydro facilities would typically be considered a "Best Technology Available," and should be deemed compliant.

The four-factor test should proceed in a stepwise manor. Under this application, a facility that meets the first criteria would be considered compliant and would not need to proceed to the next factor or comply with additional conditions. If the facility did not meet a given criteria, it would proceed to the next, and so forth. Using these procedures should result in a more reasonable and practicable application of 316(b) to hydro facilities.

#### *Requirements should be Practicable, Impactful, and not Unduly Burdensome*

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<sup>1</sup> EPA NPDES Permit Fact Sheet for U.S. Army Corp of Engineers Lower Columbia Hydroelectric Facilities, March 2020, p.52.

To align with the material impacts of the dams and to avoid being unduly burdensome, the final NPDES permits should not include monitoring for TSS, BOD, COD, or pH. The federal dams do not affect these parameters, and monitoring for them will not produce useful data or result in improvements to water quality. As an example, the NPDES Fact Sheet for the Lower Columbia dams notes that there were no pH values outside the desired range at the Bonneville Project, John Day Project, and McNary Lock and Dam<sup>2</sup>. The only measurements above the range were for outflows related to transformer cooling water, and these are scheduled to be disconnected within the next five years. Monitoring for these will cause undue burden and cost without providing meaningful benefits to water quality or data collection.

Similar to the discussion of pH and TSS above, the amount of water passing through dam CWIS and other systems that result in effluent discharges is negligible compared with overall waterflows through the dam. EPA's Fact Sheets recognize this and offer several data points showing that the impacts to river water temperatures from cooling water discharge are de minimis<sup>3</sup>. Despite this acknowledgment, the permits still call for continuous temperature monitoring. This inclusion was made in light of forthcoming TMDL temperature limits for the Snake River and the impact of river temperature on protected salmonid populations. Temperature monitoring is already addressed in other processes and should not be included as a requirement under the NPDES permits. These facilities' cooling water discharges have minimal impacts to river temperature and additional monitoring of these discharges for temperature is not appropriate.

Oil and grease discharges are the most likely and potentially significant effluent discharges from the dams, and while there should be monitoring of these, the requirements of the draft NPDES permit are excessive. These dams are run-of-river, and their impacts from discharges are similar across their spans, so requiring monitoring and reporting for every outfall would cause undue burden and cost. The necessary information can be collected from a subgroup of each dam's outfalls.

Additionally, as noted in the Fact Sheets, it is possible to perform visual inspections of the water surface, and these inspections are adequate to alert dam operators of any changes in conditions or potential problems. This visual analysis meets the narrative criteria of Washington state water quality standards<sup>4</sup>, and the specific measurement parameters set forth in the draft NPDES permits are not necessary at every outfall to ensure water quality. EPA should work with the Corps to develop a monitoring and

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<sup>2</sup> EPA NPDES Permit Fact Sheet for U.S. Army Corp of Engineers Lower Columbia Hydroelectric Facilities, March 2020, p.43.

<sup>3</sup> EPA NPDES Permit Fact Sheet for U.S. Army Corp of Engineers Lower Columbia Hydroelectric Facilities, March 2020, p.46.

<sup>4</sup> EPA NPDES Permit Fact Sheet for U.S. Army Corp of Engineers Lower Columbia Hydroelectric Facilities, March 2020, p.44.

management plan that adequately addresses effluent discharges without causing undue burden.

*Adaptive Management*

The final NPDES permits should have clear language that supports continued adaptive management and monitoring at the federal facilities. Regional policy, dam operations, and river conditions are in continual flux, and the permits should be drafted in such a way that they do not impinge upon or conflict with the adaptive management plans provided in the CRSO EIS, BiOp, or other regional documents. The final NPDES permits should reflect the material impacts of the dams and the monitoring requirements should be reasonable and representative of these.

Thank you for your consideration of the comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Simms".

Scott Simms

Executive Director of the Public Power Council