



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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WATER
DIVISION

Public Comments Received on EPA's Draft National Pollutant Discharge Elimination System (NPDES) Permits for Federal Hydroelectric Projects in the Lower Columbia and Snake Rivers

January 15 through February 16, 2021

March 1, 2021

EPA has compiled the public comments received on the draft NPDES permits for federal hydroelectric projects on the Lower Columbia and Lower Snake Rivers from January 15 through February 16, 2021. EPA received comments from 10 entities, listed below.

Bonneville Power Association
Columbia River Inter-Tribal Fish Commission
Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Umatilla Indian Reservation
Marc Gauthier
Northwest River Partners
Public Power Council
Jessica Spurr
U.S. Army Corps of Engineers
Washington Department of Ecology

You can also find public comments that EPA received on these draft NPDES permits from March 18 through May 4, 2020 at <https://www.epa.gov/sites/production/files/2020-06/documents/r10-npdes-usace-lower-columbia-snake-river-hydroelectric-facilities-public-comments-2020.pdf> and <https://www.epa.gov/sites/production/files/2020-06/documents/r10-npdes-usace-lower-columbia-snake-river-hydroelectric-facilities-public-comments-2020.pdf>.

If you experience a problem reading this document with assistive technology, please contact us (R10_Web_Team@epa.gov).



Department of Energy

Bonneville Power Administration
P.O. Box 3621
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POWER SERVICES

May 1, 2020

In reply refer to: PGA-6

Comment submitted via email: Wu.Jennifer@epa.gov

Jenny Wu
Environmental Engineer, NPDES Permits Section
EPA Region 10
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Seattle, WA 98101

Subject: Comments to the United States Environmental Protection Agency's Region 10 on draft discharge permits for eight federal hydropower facilities on the Lower Columbia and Snake Rivers.

Dear Ms. Wu:

The Bonneville Power Administration (Bonneville) appreciates the opportunity to provide comments on the United States Environmental Protection Agency's (EPA) proposal to issue NPDES permits for the following eight hydropower facilities:

- 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
- 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

The draft NPDES permits place conditions on the discharge of pollutants from these eight facilities to waters of the United States (U.S.). The eight federal draft NPDES permits would authorize discharges from cooling water, equipment, floor drains, sumps, facility maintenance water, and other miscellaneous discharges.

The U.S. Army Corps of Engineers (Corps) operates and maintains the four lower Snake and four lower Columbia River facilities for multiple congressionally authorized purposes including flood risk management, navigation, hydropower generation, fish and wildlife conservation, irrigation, recreation, water quality, and municipal and industrial water supply though not every facility is authorized for every one of these purposes. While the Corps is congressionally authorized to operate these facilities in the Pacific Northwest for multiple purposes, Bonneville is the federal agency Congress authorized to market and distribute the power generated at these facilities. In return, Bonneville is required to pay, either directly to the Corps, or as a reimbursement to the U.S. Treasury, (1) all costs associated with power-specific operations and assets (e.g. turbines); and (2) a share of “joint costs,” which benefit or mitigate, for all purposes of the facility (e.g. fish mitigation, water quality). For the facilities funded using the Corps’ Columbia River Fish Mitigation program (CRFM), which includes the four lower Snake and four lower Columbia River facilities listed above, the Northwest ratepayers’ (Bonneville’s customers) share of joint costs totals 83% for capital investments and 82% for operations and maintenance expenses. Any additional costs applied to these eight facilities as a result of these draft NPDES permits or associated 401 certifications will increase Bonneville’s costs, which in turn will impact Bonneville ratepayers throughout the Northwest.

Bonneville markets and distributes the hydropower generated at the four lower Snake and four lower Columbia River facilities. Bonneville, as part of the U.S. Department of Energy, operates as a not-for-profit federal entity, selling cost-based electrical power and transmission services to benefit the Pacific Northwest, especially the public bodies and cooperatives that serve domestic and rural consumers. In providing these services, Bonneville must balance multiple public duties and purposes, including: assuring the Pacific Northwest has an adequate, efficient, economical and reliable power supply; promoting energy conservation and the use of renewable resources; and, acting consistent with the program developed by the Northwest Power and Conservation Council by protecting, mitigating, and enhancing fish and wildlife in the Columbia River basin that are affected by the development and operations of the federal facilities from which Bonneville markets power.¹

¹ 16 U.S.C. § 839. Unlike most federal agencies, Bonneville does not receive annual congressional appropriations; instead, the agency is self-financed from revenues received from the sale of power and transmission services. Bonneville utilizes this revenue to not only pay for the continuing costs associated with its programs (including power, transmission, and fish and wildlife investments and maintenance) but also to repay the United States Treasury for the power share of the original federal investment used to construct the Federal Columbia River Power System. The Bonneville Administrator must operate the agency in a manner that allows it to recover its costs “in accordance with sound business principles.” 16 U.S.C. § 839e(a)(1). This includes the objectives of setting the lowest possible rates for Bonneville services, while enabling Bonneville to make timely repayments to the Treasury and simultaneously fulfilling multiple public purposes for the benefit of the Pacific Northwest.

Bonneville's comments focus on providing feedback on the permit conditions identified in these draft NPDES permits, and also provide recommendations for corrective action where language is ambiguous or inaccurate. Since the draft NPDES permits are identical, the following comments apply to all of the draft NPDES permits for the four lower Snake and four lower Columbia River facilities. As the principal funding entity for the four lower Snake and four lower Columbia River facilities, Bonneville respectfully submits the following comments:

1. There are limitations to the conditions that may be imposed through EPA's draft NPDES permits.

As recognized by EPA in its Fact Sheets for the lower Snake and lower Columbia River draft NPDES permits, these draft NPDES permits do not address water flowing through the facilities' spillways or passing through turbines. *See National Wildlife Federation v. Consumers Power Company*, 862 F.2d 580 (6th Cir. 1988); *National Wildlife Federation v. Gorsuch*, 693 F.2d 156 (D.C. Cir. 1982). For example, as also recognized in the EPA Fact Sheets, juvenile fish passage spill events, which are adaptively implemented to benefit juvenile and adult fish passage, are not regulated by NPDES permits. Juvenile fish passage spill is adaptively managed for these facilities through the 2019 National Marine Fisheries Service Columbia River System Biological Opinion (2019 NMFS CRS BiOp) (and part of the proposed action for the ongoing consultation regarding these facilities) and neither the NPDES permits nor the associated 401 certifications should infringe upon this longstanding adaptive management process.

As discussed above, the four lower Snake and four lower Columbia River facilities are multi-purpose dams. Therefore, any conditions imposed by the draft NPDES permits and Washington Department of Ecology's (Ecology) 401 certifications should not interfere with the Corps' ability to operate these facilities for the multiple purposes authorized by Congress. *See National Wildlife Federation v. U.S. Army Corps of Engineers*, 384 F.3d 1163 (9th Cir. 2004). Further, the language of the Clean Water Act (CWA) explicitly recognizes that the provisions of the CWA cannot be construed to affect the Corps' ability to maintain navigation. *See 33 USC 1371(a); In re Operation of Missouri River System Litigation*, 418 F.3d 915 (8th Cir. 2005).

2. The draft NPDES monitoring, reporting and analysis requirements are burdensome and should be reduced to apply only to a representative number of discharge points.

Bonneville requests that all outfalls under 1 million gallons/day (MGD) should be waived from sampling due to their de minimis impact. Bonneville requests that the timing and extent of the monitoring, analysis, and reporting requirements for pH, temperature, oil and grease, polycyclic biphenyls (PCB), total suspended solids (TSS) and biological oxygen demand (BOD) and chemical oxygen demand (COD) be re-evaluated for utility, practicability, and cost effectiveness.

The Corps has acted in good faith and demonstrated reasonable assurance that there will be compliance with the applicable provisions in the draft NPDES permits through its past actions. In fact, the Corps has already established a system for monitoring, reporting, and analysis of the impact of discharges on a representative sample of discharges, to the extent practicable. Based on the data collected to date, the discharge at the facilities will not result in the discharge of pollutants in quantities that would pose a reasonable, unacceptable risk to human health or the environment according to EPA's Fact Sheet. Bonneville requests that EPA coordinate directly with the Corps to identify representative monitoring and sampling locations and monitoring frequency that results in data utility, practicability and cost effectiveness.

Bonneville requests that EPA reduce the scope of monitoring, analysis, and reporting to include only those scientific investigations that are necessary to study the effects of the discharge that may be impacted by processes at the facilities, and not a byproduct of influent pass-through such as BOD, COD and pH. The monitoring, analysis and reporting costs associated with these draft NPDES permits are estimated to be up to approximately \$3 million in the first year of implementation and \$400,000 to \$600,000 per year after, including up to six full time employees for the lower Columbia and Snake River projects for the duration of the permits if the monitoring requirements remain as is. Adding these estimated costs across the four lower Snake and four lower Columbia River facilities will create a significant financial impact to Bonneville and the region's ratepayers.

Lastly, Bonneville requests EPA to clarify the metric that determines compliance with the effluent limits. EPA should clarify whether the absolute value of each individual sample will be compared to the limit, or whether a daily average, monthly average, or other statistic will be used for compliance purposes. For each parameter with effluent limits the sampling frequency is either weekly or monthly. For oil and grease, it is clear from the effluent limitation tables that the numeric limit is a daily maximum. However, the other parameters metric that determines compliance should be clarified.

a. **pH:** Bonneville requests reconsideration of including pH as a required monitored parameter in the draft NPDES permits. Hydropower dams, including these facilities, generally do not have the means to modify the pH of a waterbody and are merely passing the influent water through their discharge. In addition, according to the EPA Fact Sheets, section II(D) Impaired Waters / TMDLs section, which accompanied the draft NPDES permits, it appears there are no water quality-limited streams for pH listed on Oregon's and Washington's 303(d) lists. Thus, it is unclear why EPA would suggest monitoring this parameter. Requiring monitoring for a parameter that these projects generally cannot influence in areas where there is no water quality limitation for this parameter is burdensome to limited agency resources and needlessly, increases costs, which in turn impacts the Region's ratepayers.

Additionally, EPA's Fact Sheet for the Lower Columbia River states that where high levels of pH were measured to date at The Dalles Lock and Dam, those outfalls are currently undergoing a disconnection process so there will no longer be discharges from these outfalls. As EPA noted in their Fact Sheet, The Dalles Lock and Dam had pH values below 7 in most outfalls and above 8.5 with a maximum of 8.9 in outfalls 18 to 31. These outfalls are associated with transformer cooling water. The Corps communicated to EPA by email on August 28, 2018, that outfalls 20, 21, 24, and 25 have been disconnected and that the remaining outfalls are scheduled to be disconnected within the next five years when the operations change to air cooling transformer units. Once all the outfalls are disconnected, there will be no discharges from these units and the outfalls would be merely passing influent water.

Thus, Bonneville requests removing pH as a required monitored parameter in the draft NPDES permits. If EPA retains pH as a monitored parameter, then Bonneville recommends reducing the grab sample monitoring for pH to quarterly monitoring because these facilities do not have the means to modify the pH of a waterbody and are merely passing the influent water through the outfall.

b. **Water temperature:** Bonneville requests reconsideration of the proposed temperature monitoring frequency proposed in the draft NPDES permits. Based on EPA's Fact Sheets, the discharges at the four lower Snake and four lower Columbia River facilities will not affect the quality of the waters of either Washington or Oregon. Many of the outfalls covered by the draft NPDES permits are likely submerged, and the discharges from these outfalls make up a

very small percentage of the total flow of the receiving waters. In fact, EPA's Fact Sheets state that "discharges from these facilities have minimal impact" on river temperatures. This statement is based on effluent temperature data collected and submitted by the Corps and then analyzed by EPA.

Because the cooling water impacts are de minimis, the requirement that continuous monitoring thermistors be installed at identified discharge points in each of the draft NPDES permits is unnecessarily burdensome due to the uniformity of the effluent. Further, this will lead to needless and excessive costs and will result in duplicative data that will provide little additional utility. Collecting continuous monitoring at the identified discharge points will not provide additional information on river temperature characteristics due to the small percentage of water used for cooling water compared to river flow. This requirement is expensive and overly burdensome resulting in no additional data value – other than to confirm a de minimis impact.

Moreover, EPA is proposing year-round monitoring for temperature in their draft NPDES permits. River water temperatures are highly influenced by weather (e.g., high ambient air temperatures). Additionally, water temperature is important to salmonids listed as threatened or endangered under the Endangered Species Act (ESA) in the Columbia River. The proposed year-round monitoring seems to be based solely on the criticality of temperature to ESA-listed salmonids. Based on the effluent data collected by the Corps, there is a de minimis impact from temperature at these discharge points, which is insufficient to impede salmonid migration, condition or habitat.

Additionally, historical temperatures in the lower Snake River basin prior to the construction of the lower Snake River facilities and the Hells Canyon Complex show that temperatures in the free-flowing lower Snake River often exceeded 68°F (20°C) in July and August and occasionally exceeded 25°C. These measurements were taken near the mouth of the Snake River from 1955 to 1958.² Thus, imposing year-round temperature monitoring, continuous temperature monitoring or additional temperature control provisions through these draft NPDES permits or 401 certifications with targets that may be unattainable even in an unmodified system is overly burdensome. This is especially true given the minimal impact of these discharges on river temperature and that river temperatures are highly influenced by weather (e.g., high ambient air temperatures).

² Peery, C. A. and T. C. Bjornn. 2002. Water Temperatures and Passage of Adult Salmon and Steelhead in the Lower Snake River. Technical Report 02-1. U.S. Geological Survey, Idaho Cooperative Fish and Wildlife Research Unit, University of Idaho, Moscow, Idaho.

Thus, Bonneville recommends eliminating the continuous monitoring requirement or reducing it to monthly grab samples for the first year, with the potential to eliminate it after the first year. If EPA includes continuous temperature monitoring, Bonneville recommends that it is revised to more representative sampling (i.e. one thermistor per family of turbines on a reduced monitoring frequency and for a shorter time frame). This will enable data collection in a reasoned and measured manner and avoid diverting limited agency resources. Bonneville requests that EPA coordinate directly with the Corps to identify representative continuous monitoring and sampling locations, and monitoring frequency.

c. **Oil and grease:** For oil and grease, the 5 mg/L effluent limit is stringent given that the effluent limit in the draft general permit for hydroelectric generating facilities in Idaho was 10 mg/L. Bonneville recommends the effluent limit be increased to 10 mg/L to be consistent with the draft general NPDES permit in Idaho.³ Bonneville also requests that the oil and grease effluent limit criteria be clarified as an average of the day. This aligns with other regional practices, as seen in the draft general NPDES permit in Idaho, and will reduce the monitoring and reporting burden placed on the Corps. Bonneville recommends reducing the weekly or monthly grab sample monitoring for oil and grease to quarterly monitoring in these draft NPDES permits because monitoring to date by the Corps has not resulted in effluent limits exceeding the proposed 5 mg/L threshold assuming 5 mg/L is the average (referred to as maximum) daily discharge of samples taken. Bonneville requests that EPA coordinate directly with the Corps to identify representative monitoring and sampling locations and monitoring frequency.

d. **PCBs:** Bonneville recommends that the requirement to develop a PCB Management Plan be removed from each of these draft NPDES permits because historic sampling has not identified PCBs in discharges from these facilities. PCBs are a contaminant already regulated under the Toxic Substances Control Act (TSCA). Including this requirement is an over-reach of the CWA, expensive and overly burdensome given the duplicative nature of this requirement under TSCA.

Additionally, Bonneville requests EPA to clarify Section 1.B.6 of the permits which states, "The permittee is prohibited from discharging polychlorinated biphenyl (PCB) compounds such as those commonly used for transformer fluid." This statement does not provide a clear definition

³ Draft NPDES General Permit IDG360000 for Wastewater Discharges from Hydroelectric Generating Facilities in Idaho.

of what constitutes a discharge of PCBs. The statement could be interpreted to mean that PCBs must be discharged at concentrations below the freshwater toxicity criteria, or below the reporting or detection limit for a specific analytical method. Bonneville requests that EPA provide clarification for this statement.

e. **TSS, and BOD and COD:** Bonneville recommends removing the TSS and BOD and COD requirements from the draft NPDES permits for Ice Harbor, Little Goose and Lower Monumental dams. These facilities do not add to or concentrate TSS, and BOD and COD. Additionally, these water quality parameters are not influenced by activities at the dams and reflect pass through influent water quality.

3. CWA Section 316(b) or EPA's implementing rules for cooling water intake structure requirements do not apply to hydropower facilities and should be removed from these draft NPDES permits.

EPA's 2014 Section 316(b) Existing Facilities Rule applies to and was developed for steam electric power and manufacturing plants, which are fundamentally different than the four lower Columbia and four lower Snake River facilities. EPA has not established standards for hydropower facilities as part of the 2014 rule and historically has not applied CWA Section 316(b) to hydropower facilities. During the development of the 2014 rule, EPA did not solicit information from the hydropower industry and did not consider hydropower facilities in the rule. CWA section 316(b) should not apply because the applicability of the rule to hydropower facilities is unclear and is essentially an expansion of EPA's regulatory jurisdiction and authority resulting in duplication of other federal and state requirements to address fish impingement and entrainment.

Importantly, for any facility with a biological opinion under the ESA, such as these eight facilities, a comprehensive evaluation of impingement and entrainment has already occurred for the facility as a whole by NMFS and US Fish and Wildlife Service (USFWS). Thus the reference to the details of the annual Fish Passage Plan, including the Fish Operations Plan, should be removed from the permits, as they are overreaching and constraining to a system that is adaptively managed through the BiOps. CWA Section 316(b) conditions are not appropriate for hydropower facilities and should be removed from these draft NPDES permits.

In EPA's Section 316(b) 2014 rule, a facility is required to meet only one of the four factors in the order listed. It is unclear why EPA chose to use factor four for these draft NPDES permits to make their determination that technologies at the facility, in its best professional judgement (BPJ) evaluation for best technology available (BTA), satisfy 316(b) requirements when these facilities also meet factors one, two, and three. The four factors are:

Factor 1 - Efficiency of Power Generation

Factor 2 - Cooling Water Withdrawn Relative to Waterbody Volume or Flow

Factor 3 - Location of the Intake Structure

Factor 4 - Technologies at the Facility

Bonneville recommends that EPA clarify that the four factors above represent a progressive test, that if one of these factors is satisfied in the order specified, then the permit writer need not evaluate the other factors. Said another way, if one of the facilities meets one of the four progressive factors, then the other factors do not apply. These facilities meet all four 316(b) factors, and therefore no 316(b) cooling water impingement and entrainment restrictions and conditions should be included in the draft NPDES permits or associated 401 certifications.

Additionally, the location of the intake structures in the penstock or scroll case can also demonstrate that the facility meets BTA requirements for 316(b). In the case of these draft NPDES permits, EPA relied on factor 4, the technologies at the facility, in its BPJ evaluation for BTA. Existing technologies at these facilities include measures to deter fish from intakes, encourage fish to travel through fish passage structures or over spillways, and decrease velocities through turbines to minimize impingement and entrainment of aquatic life at cooling water intakes.

4. Clarifying language needs to be added to the draft NPDES permits referenced in section II.E. Cooling Water Intake Structure Requirements to Minimize Adverse Impacts from Impingement and Entrainment that the Best Technology Available (BTA) requirements are satisfied based on the annual Fish Passage Plan, which includes the Fish Operations Plan.

Although Bonneville continues to assert that CWA Section 316(b) or EPA's implementing rules for cooling water intake structure requirements do not apply to hydropower facilities and should be removed from these draft NPDES permits, the provisions in Section II. E. in the draft

NPDES permits under CWA Section 316(b) are ambiguous as written. It could also be interpreted to inhibit the adaptive management provided for in the 2019 NMFS CRS BiOp and incorporation of future technological innovations, such as installation of improved fish passage (IFP) turbines. For example, preliminary results from 2019 at Ice Harbor Dam of juvenile fish passage survival where the Corps has installed one IFP turbine showed an average of 98% survival. Additional studies will be completed after all three of the IFP turbines have been installed.

Additionally, the eight draft NPDES permits do not recognize that the Fish Passage Plan, which includes the Fish Operations Plan, changes annually. Thus, Bonneville recommends the following rewrite of Section II.E.2 in each of the eight draft NPDES permits to clarify that this section is satisfied based on the requirements in the annual Fish Passage Plan, including the Fish Operations Plan. Bonneville suggests that **Section II.E. Cooling Water Intake Structure Requirements to Minimize Adverse Impacts from Impingement and Entrainment**, subsection (2), should read “EPA has determined that the ~~following~~ existing requirements as specified in the most recent Fish Passage Plan, including the Fish Operations Plan, are sufficient to satisfy the BTA requirement to minimize entrainment and to minimize impingement mortality.” Adding the underlined language to each of the eight permits would clarify EPA’s intent that the measures identified in the annual Fish Passage Plan, including the Fish Operations Plan, satisfy the BTA requirements.

Additionally, Bonneville requests EPA strike in each draft NPDES permit the provisions and language in Section II.E.2, subsections a-e, that reference spill, screens, turbine peak efficiency, turbine priority order and physical screening and exclusion technology because they are outside the scope of these permits and outside of EPA’s regulatory authority. The Corps is already implementing the actions in subsections a-e as under the 2019 NMFS CRS BiOp. Bonneville recommends the following rewrite of section II. E.2:

II. Special Conditions

E. Cooling Water Intake Structure Requirements to Minimize Adverse Impacts from Impingement and Entrainment

2. EPA has determined that the ~~following~~ existing requirements as specified in the most recent Fish Passage Plan, including the Fish Operations Plan, are sufficient to satisfy the BTA requirement to minimize entrainment and to minimize impingement mortality.

~~———— a) Conduct spill releases over dam spillways according to schedules and guidelines in the most recent Fish Operating Plans and Fish Passage Plan.~~

~~———— b) Keep juvenile fish passage structures, submersible traveling screens, vertical bar screens, and trashracks free of debris or other material through regular and preventive maintenance and inspections.~~

~~c) Operate turbines within +/- 1% peak efficiency, or as specified in the most recent Fish Passage Plan.~~

~~d) Operate turbines in priority order to maximize fish passage as described in the Fish Passage Plan.~~

~~e) Maintain a physical screening or exclusion technology that is consistent with the objectives of National Marine Fisheries Service guidelines found in National Marine Fisheries Service in NMFS Northwest Region's Anadromous Salmonid Passage Facility Design, Chapter 11: Fish Screen and Bypass Facilities.~~

The Corps has already taken and continues to take actions that have resulted in improved fish passage to comply with the ESA. Specifying these provisions in these permits is unwarranted. Current CRS BiOps, issued by NMFS and the USFWS are implemented through the Corps' annual Fish Passage Plan, including the Fish Operations Plan, and the annual Water Management Plan. These BiOps provide clear, regionally developed guidance on how to comply with the ESA, but also rely upon adaptive management coordinated through the Regional Forum with federal agencies, and regional states and tribes to address in-season operational issues given river and fish conditions. In addition to many actions outside of the mainstem migration routes that will improve water quality (e.g., tributary habitat improvements), the NMFS and USFWS BiOps thoroughly analyze actions that mitigate fish impingement and entrainment through the use of the BTA. Additional guidance or explicit provisions that would be included in these five year NPDES permits are not warranted and would impact the adaptive management of these facilities and future technological innovations. Adaptive management and potential future technological innovations are governed by ESA consultation documents issued by the USFWS and NMFS that have a longer implementation period than this five year permit period of these draft NPDES permits.⁴

5. Several corrections are needed to the hydropower operations fish survival tables, Table 18, in both the Lower Columbia and Lower Snake River Fact Sheets.

Bonneville fish biologists reviewed Table 18 in both the Lower Snake River Fact Sheet (page 54) and Lower Columbia River Fact Sheet (page 55) provided by EPA on the draft NPDES permits. The tables show the correct juvenile survival range except for the following five facilities that Bonneville requests EPA correct:

- Bonneville: the fish survival is reported to be 96-98% for 2011-2012. However, it should be corrected to 95-99% survival for 2006-2012 and 2018.

⁴ The Action Agencies have proposed a 15 year timeframe in its biological assessment submitted to NOAA Fisheries and USFWS on January 2020. Biological Assessment of Effects of the Operations and Maintenance of the Federal Columbia River System on ESA-Listed Species, page 1-2.

- The Dalles: the fish survival is reported to be 94-99% survival for 2010-2012. However, it should be 95-99% survival for 2010-2012 [this is likely a rounding error]
- John Day: the fish survival is reported to be 94-99% for 2011 & 2012. However, it should be 92-99% for 2010-2014.
- Ice Harbor: no fish survival data was reported for Ice Harbor. Fish survival is estimated to be 95-99% for 2006 & 2007.
- Lower Granite: no fish survival data was reported for Lower Granite. Fish survival is estimated to be 92-99% for 2006 & 2018.

It appears EPA limited their fish survival estimates to three groups: steelhead, yearling and sub-yearling Chinook. All recommended changes and corrections cover these three groups. The following reports were referenced:

-Ploskey, G.R., M.A. Weiland and T.J. Carlson. 2012. Summary of route-specific passage proportions and survival rates for fish passing through John Day Dam, The Dalles Dam, and Bonneville Dam in 2010 and 2011. Interim report of research prepared by the Northwest National Laboratory for the U.S. Army Corps of Engineers, Portland District. 20 pp. Report was sent via email to the Portland District Corps on February 28, 2012.

-Skalski et.al., 2013. PNNL-22706 [Skalski JR, RL Townsend, AG Seaburg, GA McMichael, RA Harnish, EW Oldenburg, KD Ham, AH Colotelo, KA Deters, ZD Deng, PS Titzler, EV Arntzen, and CR Vernon. 2014. FINAL BiOp Performance Testing: Passage and Survival of Subyearling Chinook Salmon at Little Goose and Lower Monumental Dams, 2013. PNNL-22706, Pacific Northwest National Laboratory, Richland, Washington.

-Skalski et. al., 2014. [Skalski J. R, M.B. Eppard, G.R. Ploskey, M.A. Weiland, T.J. Carlson, and R.L. Townsend, Assessment of Subyearling Chinook Salmon Survival through the Federal Hydropower Projects in the Main-Stem Columbia River, 2014. North American Journal of Fisheries Management 34:741–752, 2014.

-Skalski et al., 2015. PNNL-23979 [Skalski, J.R., R.L. Townsend, M.A. Weiland, C.M. Woodley, and J. Kim. 2014. Compliance Monitoring of Yearling and Subyearling Chinook Salmon and Juvenile Steelhead Survival and Passage at McNary Dam, 2014. PNNL-23979, Pacific Northwest National Laboratory, Richland, WA.

-Fredricks, G. 2017. Performance Standard Testing Results. Communication to T. Conder (NMFS) from G. Fredricks (NMFS), RE: Final Data Spreadsheet, 8/28/2017.

-Ham et. al., 2018. PNNL-28331 [Ham, KD, RA Harnish, AH Colotelo, KA Deters, J Martinez, PS Titzler, JR Skalski, RL Townsend, T Fu, X Li, CA Duberstein, ZD Deng, and GM McMichael. 2018. Survival and Passage of Yearling and Subyearling Chinook Salmon and Steelhead at Lower

Granite Dam, 2018: Technical Report. PNNL-28331. Draft report submitted by the Pacific Northwest National Laboratory to the U.S. Army Corps of Engineers, Walla Walla, Washington.

-Harnish et al., 2019. PNNL-28325 [Harnish R. A., K.D Ham, J.R. Skalski, R.L. Townsend, J.M. Lady, K.D. Deters, P.S. Titzler, A.H. Colotelo CL Grant, T. Fu, X. Li, J.J. Martinez, Z. Deng, M.K. Nims, E.L. McCann, Y. Yuan, C. L. Grant, Yearling Chinook Salmon and Juvenile Steelhead Passage and Survival through the FCRPS, 2018 - Final Report.

6. The five year lifetime of these draft NPDES permits and their associated provisions could prevent adaptive management included in the 2019 NMFS CRS BiOp (and in any future CRS consultation documents) and could restrict the Corps' ability to carry out its congressionally authorized purposes.

These draft NPDES permits are envisioned to be in effect for five years which is in conflict with longer term governing documents such as the 2019 NMFS CRS BiOp and any future CRS ESA consultations. The 2019 CRS BiOp will be in effect through 2020 when it will be replaced by updated biological opinions that incorporate new actions and will be supported by analysis developed during the Columbia River System Operations Environmental Impact Statement National Environmental Policy Act process. The analyses performed by the USFWS and NMFS will cover a longer time frame than the five year NPDES permits.⁵ To account for changing conditions over that timeframe, the new BiOps will continue reliance upon adaptive management of the Columbia River System. If CWA provisions are included in these draft NPDES permits that lead to a loss of existing adaptability and a loss of existing regional collaboration and creativity to solve complex issues, that would be in direct conflict with the 2019 NMFS CRS BiOp and any future CRS ESA consultations.

In addition, these draft NPDES permits or associated 401 certifications should not include juvenile fish passage spill or flow provisions. Modifying juvenile fish passage spill operations for the purposes of managing water quality is already provided for through the adaptive management provisions in the 2019 CRS NMFS BiOp.⁶ River flow levels and spill rates are currently managed effectively with input from the existing Regional Forum, which provides for adaptive management where necessary. The Regional Forum includes representatives from the Corps, Bonneville, Bureau of Reclamation, NMFS, USFWS, and other sovereign entities throughout the Northwest, and includes including representatives from Washington, Oregon, Montana, Idaho and regional tribes. Adaptive management of these facilities uses a well-

⁵ See *supra* note 6.

⁶ A wide range of juvenile fish passage spill levels were assessed through modeling and estimated to have limited impact to water quality parameters during the Columbia River System Operations Environmental Impact Statement development.

established collaborative approach and is a specific point of emphasis for Bonneville and the Corps. Imposing additional provisions through these draft NPDES permits or associated 401 certifications can lead to a loss of this existing adaptability and regional collaboration and creativity to solve complex issues. Degradation of water quality could also occur if the permits limit the flexibility to test new technologies or operations that the Regional Forum, which could improve water quality.

Bonneville appreciates the opportunity to provide comments on EPA's draft NPDES permits for the four lower Snake and four lower Columbia River facilities to ensure that any new requirements are reasonable, purposeful, implementable, practicable, and cost effective. This is especially important to Bonneville because the draft NPDES permit conditions would further impact Bonneville's costs, and thus, the region's ratepayers. For awareness, Bonneville embarked on a multi-year effort at cost management for all of its program areas to help stabilize its revenue requirements and limit or eliminate the need for continued rate increases. Bonneville is seeking to manage costs in order to ensure a sustainable path into the future that will allow continued provision of a diverse array of public benefits to the Northwest, including a reliable and effective carbon-free power supply, fish and wildlife protection, mitigation and enhancement actions and energy conservation. Thus, we look forward to working with EPA and Ecology to ensure any new requirements for discharge monitoring at these eight facilities provide important data for the region in a cost-effective manner.

Sincerely,

Kieran Connolly
Vice President of Generation Asset Management
Bonneville Power Administration

cc: Heather Bartlett, Washington Department of Ecology, Deputy Director
(heather.bartlett@ecy.wa.gov)
Daniel Opalski, U.S. EPA, Region 10, Director Water Division
(Opalski.Dan@epa.gov)
Jennifer Wigal, ODEQ, Deputy Administrator, Water Quality
(WIGAL.Jennifer@deq.state.or.us)



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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February 16, 2021

Ms. Jennifer Wu
NPDES Permits Section
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155 (19-CO4)
Seattle, WA 98101-3188
Sent via email: wu.jennifer@epa.gov

**Re: Proposed Discharge Permits for Federal Hydroelectric Projects in the Lower
Columbia and Lower Snake Rivers**

Dear Ms. Wu:

The Columbia River Inter-Tribal Fish Commission (CRITFC) appreciates the opportunity to provide comments on the proposed heat load limits for the National Pollutant Discharge Elimination System permits (NPDES) for Federal Hydroelectric Projects in the Lower Columbia and Lower Snake Rivers. CRITFC's mission is to protect our member tribes' treaty fisheries and the quality of waters in the Columbia Basin. CRITFC and its member tribes rely on cooperation with EPA to protect water quality and to advance treaty fishery protection.

The ability to exercise treaty fishing rights is dependent upon clean water and healthy ecosystems. In 1977, four sovereign treaty tribes of the Columbia Basin: the Nez Perce Tribe, the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the Confederated Tribes and the Bands of the Warm Springs Reservation of Oregon, formed CRITFC to provide coordination, management, and technical assistance to ensure that the tribes' treaty fishing rights are protected through the continuation and restoration of tribal fisheries and their habitat into perpetuity. CRITFC supports its member tribes, the Yakama Nation and CTUIR, and hereby incorporates by reference their comments on these permits.

EPA's May 2020 draft Total Maximum Daily Load for Temperature (TMDL) in the Columbia and Lower Snake Rivers TMDL makes clear that the temperature regimes of the mainstem create dangerous conditions for fish of the Basin. System-wide changes will be necessary to reduce water temperatures and limit the magnitude of impairments. CRITFC supports EPA's action to include heat load waste load allocations (WLAs) in the NPDES permits for the lower Columbia and lower Snake rivers. This is a first step to achieve temperature management in the Columbia Basin.

Waste Load Allocations.

EPA has requested comments on the proposed heat load effluent limits based on both the May 2020 TMDL WLAs and U.S. Army Corps of Engineers (Corps) WLAs alternatives. Information provided by EPA indicates that the Corps WLAs are higher than the May 2020 WLAs for all dams except The Dalles. These differences are attributed to the Corps using adjusted August temperatures and estimates of the influence of facility operations. The temperature, outfall design flow data, and the estimation method that the Corps used in their calculations was not made available to reviewers. While current data may be limited, WLAs calculations should be made on information that is transparent to EPA, state regulators and co-managers. The permitted WLAs should be reexamined and revised if necessary when permit monitoring requirements are met.

Heat Load Effluent Limits.

EPA's proposed NPDES permits require that the "permittee must comply with the effluent limits in the tables at all times unless otherwise indicated, regardless of the frequency of monitoring or reporting required by other provisions". For thermal releases, a facility-wide monthly average sets this limit. Yet the permit also requires continuous temperature monitoring of select outfalls after the first six months of the effective date of the permit. It is not clear why meeting thermal heat load only at an averaged monthly level is used to set the permit's heat load effluent limit. Averaged monthly targets are not precise enough to understand when heat load effluents compromise the intended goal of limiting thermal releases.

Management of acute thermal impacts to river resources is as important as the avoidance of chronic impacts. We recommend that the permitted facilities achieve daily compliance with heat load effluent limits as is required for other pollutant releases. In addition, the Discharge Monitoring Reports (DMR) and Temperature Data Report which are required to include the monthly instantaneous maximum, the maximum daily average, and 7-day average daily maximum (7-DADM) temperatures measured in each outfall along with daily flow data should be made available to all regional co-managers.

Appendix B in EPA's TMDL provides an important compilation of data on temperature conditions throughout the river system for 2011-2016 and provides a useful comparison to existing standards. It is apparent from Appendix B's full-year graphics, that temperature criteria exceedances begin as early as June at multiple locations. We recommend that the NPDES heat load limits be extended from a July to October frame to June to October. Including June heat load data would allow regional co-managers to better determine the earliest onset of temperature exceedances such as those observed in high temperature/low flow years like 2015.

Washington Ecology's 401 Water Quality Certification.

Clean Water Act section 401 requires that any federal permit resulting in a discharge into the waters of a state will be certified as assuring compliance with that state's water quality standards. NPDES permits are subject to state 401 certifications and the federal agency is required to include conditions therefrom into its permit. Accordingly, EPA should be implementing all conditions from Washington Ecology's May 2020 401 certification, including conditions related to load allocations addressed in the temperature TMDL. That EPA has not included all these conditions is contrary to law, whether interpreted under the previous CWA section 401 regulations or the September 2020 rule.

Thank you for this opportunity to submit these comments. Please contact Dianne Barton, Water Quality Coordinator, with any questions at 503-238-0667.

Sincerely,

A handwritten signature in black ink, appearing to read "Jaime A. Pinkham". The signature is fluid and cursive, with a large initial "J" and "P".

Jaime A. Pinkham
Executive Director



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

February 12, 2021

Sent via Electronic Mail

Jennifer Wu
Environmental Engineer
NPDES Permits Section
EPA Region 10
1200 6th Avenue, Suite 155 (19-CO4)
Seattle, WA 98101

RE: DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS FOR
FEDERAL HYDROELECTRIC PROJECTS ON THE COLUMBIA AND LOWER SNAKE RIVERS

Dear Ms. Wu:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) in response to the Environmental Protection Agency’s (“EPA”) request for comments on draft National Pollutant Discharge Elimination System permits (“NPDES Permits”) for eight federal hydroelectric facilities (“Facilities”) on the Lower Columbia and Snake Rivers.¹

Since time immemorial, the original, free, and independent Native Nations that later confederated as the Yakama Nation have depended on the Columbia River for cultural, spiritual, and economic wellbeing. In Article III of the Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951 (“Treaty of 1855”), the Yakama Nation expressly reserved the right to fish at “usual and accustomed places,” which includes sites on the Columbia River.² The Yakama treaty negotiators knew that securing these rights was crucial to guaranteeing the vitality of their people. For the Yakama Nation, the exercise of fishing rights in particular was “not much less necessary...than the atmosphere they breathed.”³

The Yakama Nation acts as a steward over the Columbia River in exchange for the livelihood that it provides, “speaking for the things that cannot speak for themselves.” The Yakama Nation’s Fisheries Resource Management Program and Yakima/Klickitat Fisheries Project have seen considerable success revitalizing fish populations and

¹ The Yakama Nation previously commented on the EPA’s initial drafts of the NPDES Permits. Since many of the Yakama Nation’s prior comments, dated May 4, 2020, are still applicable, they are enclosed for your review.

² See, e.g., *U.S. v. Winans*, 198 U.S. 371 (1905).

³ *Id.* at 381.

habitat throughout the Columbia River Basin. This success is threatened, however, by the drastic increases in water temperature caused by industrial development and exacerbated by climate change.⁴ The mass sockeye fish kill in 2015, which was “attributed primarily” to extreme water temperature exceedances,⁵ was devastating to both the Yakama Nation’s fisheries and its culture. The Yakama Nation therefore has a significant interest in ensuring that water temperature in the Columbia River and its tributaries is regulated in a manner that will protect fish and, by extension, the Yakama Nation’s Treaty-reserved rights.

The Clean Water Act, 33 U.S.C. 1251 et seq., provides a number of tools for regulating water temperature. One such tool is certification under Section 401. Where a federally permitted activity has the potential to discharge into navigable waters, Section 401 provides that the state where the discharge originates must certify the federal permit.⁶ These certifications may include provisions necessary to ensure the permitted activity will comply with water quality standards and other appropriate requirements.⁷ Each of these provisions “shall become a condition” on the federal permit. States can therefore condition their certifications such that federally permitted activities do not cause adverse temperature impacts to water quality.⁸

The draft NPDES Permits triggered the state of Washington’s Section 401 authority. On March 18, 2020, the EPA requested the Washington Department of Ecology (“Ecology”) to certify the Facilities under the Section 401. Ecology responded by issuing certifications on May 7, 2020 (“Certifications”). The Certifications contain a number of conditions for the U.S. Army Corps of Engineers’ (“Corps”) operation of the Facilities, one of which is a requirement that the Corps “meet the load allocations in the Columbia and Lower Snake Rivers Temperature Total Maximum Daily Load once issued.”

The Yakama Nation is generally supportive of the EPA’s decision to incorporate wasteload allocations from the Lower Columbia and Snake Rivers Temperature Total Maximum Daily Load (“TMDL”) into the draft NPDES Permits, as required by the Certifications.⁹ However, the EPA has failed to incorporate all of the conditions from the Certifications. For example, it is not apparent that the draft NPDES Permits require the Corps to “implement temperature control strategies” or “consult with

⁴ See, The Yakama Nation, *Climate Adaptation Plan for the Territories of the Yakama Nation*, 28-9 (April 2016), <https://www.critfc.org/wp-content/uploads/2016/05/Yakama-Nation-Climate-Adaptation-Plan-.pdf>.

⁵ Answer at 2, *Columbia Riverkeeper v. Pruitt*, No. 2:17-cv-00289-RSM (W.D. Wash. May 15, 2017).

⁶ 33 U.S.C. § 1341(a)(1).

⁷ 33 U.S.C. § 1341(d).

⁸ *Id.*

⁹ The Yakama Nation qualifies its support by noting that, on July 17, 2020, it submitted comments to the EPA which highlighted flaws in the TMDL. Unless the EPA corrects these flaws, it should not holistically rely on the TMDL for its development of the draft NPDES Permits.

Ecology to develop a water quality attainment plan [that includes] a detailed strategy for achieving Washington’s water quality standards for temperature...”¹⁰

The Certifications expressly require the Corps to take these actions, but the draft NPDES permits make no clear mention of them. Section 401 requires that each of the Certification provisions “shall become a condition” on the draft NPDES Permits. Therefore, the EPA cannot simply ignore Ecology’s directives in the Certification. The EPA must further revise the draft NPDES Permits to incorporate the Certification conditions wholesale.

In addition to this glaring deficiency, Yakama Nation staff identified the following technical concerns with the draft NPDES Permits:

- The Fact Sheet for the draft NPDES Permits (“Fact Sheet”) notes that the maximum temperatures used in the TMDL did not consider temperature measurements from August, which is the warmest month of the year.¹¹ This is a significant oversight. The Fact Sheet proceeds to explain the Corps estimated August temperatures, which informed the agency’s newly proposed wasteload allocations.¹² The Yakama Nation requests further information on the estimations performed by the Corps to develop its proposed wasteload allocations beyond the short narrative provided in the Fact Sheet.
- The Fact Sheet indicates that McNary Lock and Dam no longer has a heat load effluent limit.¹³ However, the draft NPDES Permit associated with McNary Lock and Dam retains the previous heat load.¹⁴ The EPA has not provided an explanation for this discrepancy.
- The draft NPDES Permits provide for monthly compliance calculations with respect to the wasteload allocations. While this timeframe may be standard in other contexts, it is not sufficiently protective for fish. The EPA should revise the draft NPDES Permits to require daily compliance calculations. Ideally, the Corps or EPA would then share the data collected with the Yakama Nation and stakeholders.
- The draft NPDES Permits require PCB characterization monitoring “when the river temperature is high (July through September).”¹⁵ However, data indicates that under current conditions the Columbia River begins warming in June. As such, the

¹⁰ See, e.g., Department of Ecology, Order # 18146 (May 7, 2020).

¹¹ EPA, Fact Sheet for Proposal of Heat Load Effluent Limits in Lower Columbia River Hydroelectric Generating Facilities, 7 (2021).

¹² *Id.*

¹³ See, *id.*

¹⁴ See, e.g., EPA, Authorization to Discharge under the National Pollutant Discharge Elimination System, Permit No. WA0026824, 6.

¹⁵ EPA, Authorization to Discharge under the National Pollutant Discharge Elimination System, Permit No. WA0026778, 16.

EPA should revise the draft NPDES Permits to require the Corps to begin monitoring in June rather than July.

The Draft NPDES permits have the potential to affect Treaty-reserved resources. The Yakama Nation accordingly has a significant interest in ensuring that the EPA acts in a manner that is both consistent with applicable law and adequately protective of water quality and fish populations. To that end, the EPA must address the issues described above prior to finalizing the NPDES Permits.

The Yakama Nation appreciates the opportunity to comment on this important matter and reserves the right to provide further input beyond the public comment period, as well as request government-to-government consultation on the draft NPDES Permits as Tribal Council deems necessary. If you have any questions regarding this letter, please contact Mr. Ethan Jones, Lead Attorney for the Yakama Nation Office of Legal Counsel, at (509) 865-7269, ext. 6014.¹⁶

Sincerely,



DELANO SALUSKIN, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

ENCLOSURE: YAKAMA NATION COMMENTS RE: DRAFT NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMITS FOR THE EIGHT LOWER COLUMBIA AND LOWER
SNAKE RIVER HYDROELECTRIC FACILITIES (MAY 4, 2020)

¹⁶ In submitting this comment, Yakama Nation does not waive its sovereign immunity from suit, nor does it waive, alter, or otherwise diminish its sovereign rights, privileges, or remedies guaranteed by the Treaty with the Yakama of 1855 (12 Stat. 951). Furthermore, submission of this comment does not substitute for formal government-to-government consultation on this matter.



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

May 4, 2020

Sent via Electronic Mail

Jennifer Wu
Environmental Engineer
NPDES Permits Section
EPA Region 10
1200 6th Avenue, Suite 155 (19-CO4)
Seattle, WA 98101

**Re: Draft National Pollutant Discharge Elimination System Permits for the
Eight Lower Columbia and Lower Snake River Hydroelectric Facilities**

Dear Ms. Wu,

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) submits the following comments regarding the Environmental Protection Agency's (EPA) draft National Pollutant Discharge Elimination System (NPDES) permits for eight federal hydroelectric facilities (Facilities) on the Columbia River and the factsheets associated with these permits.¹

The Yakama Nation is a sovereign and original Native Nation federally-recognized under the Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855 ("Treaty of 1855").² The Yakama Nation's history and culture, as well as the lives of our People, are intertwined with Nch'i-Wa'na (the Columbia River) and the salmon, fish, plants, and animals that rely on its waters. The Yakama Nation has reserved rights in these resources pursuant to Article III of the Treaty of 1855. Protecting the waters of the Columbia River and its tributaries is therefore critical to the protection of our Treaty-reserved resources and rights, and ultimately to the health and welfare of our communities.

The goal of our engagement in NPDES permit applications and processes such as these is to ensure compliance with the Clean Water Act (CWA) and protection of our Treaty-reserved resources.

Background Summary

The EPA is the NPDES permitting authority for federal facilities discharging in Washington State waters, while the Oregon State Department of Environmental Quality

¹ In addition, the Yakama Nation submits the attached comment letter concerning Section 401 Certifications.

² 12 Stat. 951 (June 9, 1855, ratified March 8, 1859, proclaimed April 18, 1859).

**YAKAMA NATION COMMENTS ON DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS FOR
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(ODEQ) is the NPDES permitting authority for such facilities discharging in Oregon State waters. The U.S. Army Corps of Engineers (USACE) operates the Facilities. The CWA prohibits the discharge of pollutants into navigable waters without permit coverage. However, the Facilities have historically been operated without NPDES permits.

In 2018, the EPA issued draft NPDES permits for review as a response to the 2014 Settlement Agreement between USACE and Columbia Riverkeeper. In early 2019, the EPA recalled the draft NPDES permits and halted the review process. On March 18, 2020, the EPA reissued eight draft NPDES permits and restarted the review process. Once issued, the draft NPDES permits would authorize point sources discharges from the Facilities including oil, grease, and water from cooling water equipment, floor drains, sumps, facility maintenance water, and other miscellaneous discharges. Upon reissuing the draft NPDES permits, the EPA sent a letter to the Yakama Nation offering to reinitiate consultation on the draft permits. The EPA also requested Washington State Department of Ecology (Ecology) and ODEQ Section 401 certifications with respect to the discharges contemplated by the draft NPDES permits.

The draft NPDES permit process and associated actions apply to following facilities:

- 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
- NPDES Permit Factsheet for Lower Columbia River Hydroelectric Facilities
- NPDES Permit Factsheet for Snake River Hydroelectric Facilities

Additionally, on April 10, 2020, the previous October 17, 2018 court ordered deadline for the EPA to issue a Columbia River Total Maximum Daily Load (TMDL) for temperature

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was extended to May 18, 2020. This extension was due to ongoing delays related to the COVID-19 pandemic response.

Through communication with the EPA, it is the Yakama Nation's understanding that Endangered Species Act (ESA) Section 7 consultation documents are being prepared for submittal to the National Oceanic Atmospheric Administration Fisheries (NOAA Fisheries) and U.S. Fish and Wildlife Service (USFWS).

As this brief summary illustrates, this has been a drawn out and complicated process with little to no opportunity for the Yakama Nation to provide sufficient oversight to protect our Treaty-reserved resources. The EPA's draft NPDES permit review process, as well as the associated Section 401, TMDL, and ESA actions, is being rushed and compartmentalized into several pieces that have not allowed time for meaningful consultation and input from the Yakama Nation. As a result, there is a potential that unknown and negative impacts to water quality and Treaty-reserved resources will continue throughout the Columbia River Basin.

The remainder of this letter provides comments to the EPA's draft NPDES permits and other associated actions. General topics for the remainder of the comment letter include:

- Government-to-Government Consultation
- Section 401 Water Quality Certifications
- Temperature TMDL
- ESA Section 7 Consultation and Treaty Resources
- 2018 Draft NPDES Permits
- 2020 Draft NPDES Permits

Government-to-Government Consultation

The Yakama Nation appreciates the EPA's October 1, 2018 and March 18, 2020 letters offering to initiate consultation on the NPDES permits for the Facilities. All of the facilities listed above are within Yakama Nation's ceded or ancestral lands and, as co-manager of fish stocks throughout this area, we are very interested in engaging in decisions that have or may have direct impacts to our Treaty-reserved resources in the Columbia River Basin.

Official government-to-government consultation with the Yakama Nation must take place between the Yakama Nation Tribal Council and the decision-maker from the agency proposing an action. However, before the Yakama Nation can assess and consider the key elements of an action through consultation, a staff-level technical briefing is required to discuss the action. During the 2018 NPDES permit process, a staff-level technical meeting between Yakama Nation and EPA staff was conducted on November 11, 2018 to discuss the draft permits. At the time of this comment letter, a staff-level technical meeting had not been conducted for the new draft NPDES permit process. This staff-level meeting is prerequisite to meaningful government-to-government consultation on the draft NPDES permits.

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Given the short timelines associated with the draft NPDES permits, Section 401 certifications, TMDL, and ESA Section 7 consultation actions (and disruptions due to COVID-19 pandemic), however, there is not sufficient time to schedule and conduct a staff-level technical meeting. Yakama Nation staff will therefore be unable to fully brief the Yakama Nation Tribal Council in a manner that allows the Council members to make an informed decision regarding consultation. Consequently, under the current schedule, there will be no meaningful consultation opportunity for the Yakama Nation Tribal Council to weigh in on impacts to Treaty-reserved resources.

Without adequate consultation, the Yakama Nation is concerned that impacts to our Treaty-reserved resources will not be sufficiently evaluated and addressed. For example, the draft NPDES permit factsheets discussion on environmental justice issues is lacking in analysis of impacts to Native Nations and their Treaty-reserved resources. The factsheets appear to simply refer to census block proximity and do not provide a thorough discussion of Native Nations, traditional uses, and Treaty-reserved resources. The remainder of the comment letter outlines additional concerns that are appropriate for consultation.

Comment #1 The EPA must conduct a meaningful consultation with the Yakama Nation, including a staff-level technical meeting, prior to making a determination on the NPDES permits for the Facilities.

Comment #2 The EPA must perform a comprehensive evaluation of impacts to Native Nations and Treaty-reserved resources prior to making a determination on the NPDES permits for the Facilities.

Section 401 Water Quality Certifications

Section 401 of the CWA provides that states must certify federally permitted actions with the potential to discharge into navigable waters to ensure that the actions will not violate applicable water quality standards.

With respect to the Facilities, the states may invoke Section 401 authority to condition the NPDES permits to ensure protection of water quality and designated beneficial uses. This includes meeting water quality standards for temperature in the reservoirs, spill over the dams, total dissolved gas, and salmon migration. If Ecology issues Section 401 certifications here, the EPA must incorporate any conditions into the NPDES permits, including temperature standards and other criteria necessary to protect salmon, pacific lamprey, sturgeon, Southern Resident orcas, and other species from the combined impacts of dam operations and climate change.

The Yakama Nation's understanding is that ODEQ and Ecology will issue separate Section 401 certifications for the NPDES permits on the Facilities. In 2018, ODEQ delivered a precautionary objection to the original draft NPDES permit due to the timeline and separation of the process from Ecology. In 2020, the separation of process seems to be continuing. This is an inadequate and confusing approach that will result in disjointed and separate permit conditions, monitoring, mitigation measures, and reporting.

YAKAMA NATION COMMENTS ON DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS FOR
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Comment #3 The EPA must ensure coordination with and between Ecology's and ODEQ's Section 401 certification processes.

Comment #4 The EPA must comply with any Section 401 certification conditions to ensure that NPDES permits are consistent with state water quality standards.

Total Maximum Daily Load

In addition to the draft NPDES permit and Section 401 certification process, the EPA is in the process of issuing a Columbia River temperature TMDL. Again, Section 401 of the CWA empowers Ecology to implement TMDL requirements as binding conditions of its certification.

Dams restrict natural processes in the Columbia River Basin, resulting in water temperatures that are so hot at times that they impede salmonid migration and increase stress, disease, and mortality. When these impacts are combined with projected climate change effects, there is significant potential for harm to Treaty-reserved salmon populations. The states seem to be cognizant of this fact. In 1994, Washington State listed the Columbia River as impaired due to high temperatures. Both Washington State and Oregon State requested the EPA issue a Columbia River temperature TMDL over twenty years ago, but the EPA has yet to issue one.

In 2018, the District Court for the Western District of Washington granted the EPA's request for a stay on issuing the Columbia River temperature TMDL, which was scheduled for completion on December 17, 2018. One of the reasons the 2018 draft NPDES permits were pulled was due to uncertainty with the Columbia River temperature TMDL. A decision on the TMDL will determine whether these new draft NPDES permits will have individual temperature allocations. In addition, the EPA is still waiting for direction from its decision-makers regarding the NPDES permits' compliance with requirements on cooling water intake structures under Section 316(b) of the CWA. The deadline for the EPA to issue the TMDL described in the District Court's Order has been extended from October 17, 2018 to May 18, 2020.

Comment #5 How does having a Columbia River temperature TMDL not yet issued impact the draft NPDES permits?

Comment #6 How can the draft NPDES permit and Section 401 certification processes take place when the TMDL has not been issued and it is not clear if EPA will meet the deadline of May 18, 2020?

Comment #7 Once issued, the Columbia River temperature TMDL and associated implementation plans must become conditions of the NPDES permits.

Comment #8 The EPA should delay final issuance of the NPDES permits until the Section 401 certification and TMDL process is completed and the Yakama Nation is given an opportunity to provide meaningful oversight.

ESA Section 7 consultation

To comply with the ESA, the EPA will initiate consultation with NOAA Fisheries and USFWS (the Services). It is the Yakama Nation's understanding that the EPA is in the process of drafting ESA Section 7 consultation documents for submittal to the Services. The EPA has indicated through communications to the Yakama Nation that it would share these documents with the Yakama Nation when they are completed. As co-manager of fish stocks throughout the areas impacted by the Facilities, the Yakama Nation is very interested in engaging in decisions with potential to impact our Treaty-reserved resources, including the ESA Section 7 process for the draft NPDES permits.

Comment #9 How does having ESA consultation not yet completed impact the draft NPDES permits?

Comment #10 EPA should make a concerted effort to include the Yakama Nation in a transparent and coordinated effort so that we can provide input and expertise on ESA Section 7 documents and consultation with the Services.

Comment #11 The EPA should delay final issuance of the NPDES permits until the ESA consultation process is completed and the Yakama Nation is given an opportunity to provide meaningful oversight.

2018 Draft NPDES Permits

In 2018, the Yakama Nation and the EPA had a staff-to-staff meeting to discuss the draft NPDES permits. The Yakama Nation raised several issues and concerns regarding the permits and process. It is not apparent that these issues and concerns have been addressed in this new process, as meaningful government-to-government consultation (including a staff-to-staff meeting) has not been conducted during the 2020 draft NPDES permits, Section 401 certification, or TMDL processes. Without consultation, it is unclear what impacts to Treaty-reserved resources will actually result.

The following issues and concerns were raised by Yakama Nation staff during the 2018 meeting with EPA staff, which still apply to the 2020 draft NPDES permits and process:

1. What is the history of NPDES permits at dams on the Columbia River and why are these permits needed now?
 - a. The EPA'S letter only addressed the Facilities in the Zone 6 fishery and the Lower Snake River. However, Grand Coulee Dam has been mentioned in other correspondence. What is the status of the NPDES permit for Grand Coulee Dam?
2. We have concerns with two separate permits for Facilities on the Oregon/Washington border.
 - a. What will be done to ensure discharges on both sides of the river are enforced consistently?

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- b. How involved is WA and OR in this permitting process?
 3. Permit coverage.
 - a. The NPDES permits seem to only focus on concrete structures of the Facilities. General facility-wide stormwater discharges from hydroelectric generating operations appear to be largely unpermitted/unregulated at this point and these draft permits only cover specific sub-areas or operations (ex. oil-water separators). How will facility-wide stormwater be covered in these permits? Industrial activities and hazardous material usage, storage, and disposal have historically taken place at the Facilities. For example, there is contaminated stormwater that has impacted sediments at the Bradford Island site which is part of the Bonneville Dam complex; however, these pollutant discharges have not been monitored, adequately controlled, or permitted. Furthermore, the contamination at Bradford Island was only discovered through cleanup activity. There is high probability for contaminated stormwater at the other Facilities . A much larger look at facility-wide stormwater pollutant discharges at the Facilities must be conducted and included in this effort.
 - b. The Yakama Nation is encouraged to see the permit does not allow for PCB discharges of any kind. However, the Columbia River itself already contains PCBs and therefore the Facilities will discharge water with PCBs in it. How does the EPA intend to reconcile this?
 - c. The Facilities have been operated for more than fifty years and are basically large industrial sites. Therefore, it would seem that EPA must complete a full screening of the chemicals present in the discharge water prior to selecting the chemicals to be regulated under the NPDES permits.
 4. The temperature TMDL was set for issuance by December of 2018, but has been delayed until May 18, 2020. If issuance does not occur by May 18, 2020, these permits will be moot according the draft language. What is the EPA strategy for incorporating the temperature TMDL and adjusting if the TMDL is not issued by May 18, 2020?

Comment #12 Yakama Nation's 2018 issues and concerns must be addressed and incorporated into the 2020 draft NPDES permit process.

2020 Draft NPDES Permits

General Concerns

Each draft NPDES permit covers numerous outfalls at each of the Facilities. The following overarching issues and concerns apply to all eight of the draft NPDES permits and associated actions:

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- No opportunity for the Yakama Nation to review and comment on the multiple best management and monitoring plans that will be attached to permits.
- No opportunity for the Yakama Nation to review mitigation plans, particularly related to mitigation measures for temperature.
- No opportunity for the Yakama Nation to review and comment on the multiple implementation plans that will be attached to permits.
- No opportunity for the Yakama Nation to review and comment on the EPA's evaluation of Section 401 Water Quality Certifications.
- No opportunity for the Yakama Nation to review and comment on Columbia River temperature TMDL.
- No opportunity for the Yakama Nation to review and comment on ESA Section 7 documents.
- No opportunity for the Yakama Nation to engage in meaningful government-to-government consultation.

As written, several issues remain that are not being covered in these draft NPDES permits. As a result, these Facilities, combined with the rest of the impoundments, will continue to impact water quality and Treaty-reserved resources. At a minimum, the draft NPDES permits must include conditions to cover oil spills (large and small), facility-wide storm water contamination, temperature, entrainment, and migration issues. Additionally, to be protective of water quality standards and Treaty-reserved resources, the following items need to be covered in the draft NPDES permits:

- Water behind dams;
- Water being spilled over dams;
- Water used only for hydroelectric generating purposes; and
- Water used only for navigation purposes.

Temperature Concerns

The EPA's assessment of temperature impacts is inadequate because only cooling water discharges from the hydroelectric generating facilities were evaluated.

In the draft NPDES factsheets, the EPA stated that the cooling water discharges may affect temperatures, but the effects may be small since these discharges combine with water passed over the spillways. The draft NPDES permit factsheets diminish water temperature issues with temperature calculations and rationale for outfall discharges not impacting temperatures because water coming in as discharge from upstream reservoirs is already hot. As shown in the factsheet, there are multiple dams in a row on both the Columbia and Snake Rivers. Aside from the Grand Coulee and Lower Granite dams, the remaining dams are fed by waters warmed by upstream dams.

Therefore, this is a compounding issue impacting water temperature for hundreds of miles. Dams restrict natural processes and raise water temperatures in the Columbia River which negatively impact, and at times is lethal to, adult and juvenile salmonids. The factsheets

**YAKAMA NATION COMMENTS ON DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS FOR
THE EIGHT LOWER COLUMBIA AND LOWER SNAKE RIVER HYDROELECTRIC FACILITIES
MAY 4, 2020**

state that the Facilities' permitted discharges have minimal impacts on temperatures in the Columbia River, primarily because of dilution and effluent temperatures. Given the locations and cumulative effects of all the Facilities combined, however, temperature impacts are not minimal and in fact are a major reason Columbia River salmonid are in peril.

Comment #13 The NPDES permits must address temperatures at the Facilities and meet state water quality standards for temperature, including preventing unreasonable degradation of surface water quality upstream and downstream of each dam.

Comment #14 The NPDES permits must include any conditions necessary to meet applicable state, tribal, and federal water quality standards.

Comment #15 The NPDES permits should include suggested modifications to facilitate mitigating impacts including: modification of fish ladders, drawing down of selected reservoirs, increasing summer flows for temperature and migration, modifying flows for habitat, and ultimately transitioning away from dependency on hydropower and obstruction of the Columbia River.

Comment #16 The Corps must submit a water quality attainment plan (WQAP) detailing potential strategies, including dam removal, to comply with temperature standards and migration and habitat needs.

Comment #17 The WQAP and all other plans should be provided to Yakama Nation for review and input so that their Treaty Resources are protected.

Conclusion

The Yakama Nation appreciates the opportunity to comment on the draft NPDES permits and associated actions by the EPA. The NPDES permits have the potential to affect Treaty-reserved resources. As such, the concerns described in these comments are of great importance to the Yakama Nation.

If you have any questions or concerns regarding this comment, please contact Ms. Rose Longoria, Regional Superfund Projects Manager for the Yakama Nation Fisheries, at (509) 865-5121 ext. 6365.

Respectfully,

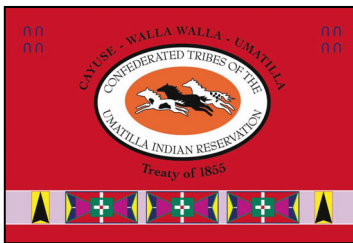


Phil Rigdon, Superintendent
Department of Natural Resources

Attachment: Yakama Nation April 13, 2020 Comment Letter on CWA Section 401
Certifications

**Confederated Tribes *of the*
Umatilla Indian Reservation**

Department of Natural Resources



46411 Timine Way
Pendleton, OR 97801

www.ctuir.org ericquaempts@ctuir.org
Phone: 541-276-3165 Fax: 541-276-3095

February 16, 2021

Ms. Jennifer Wu
Environmental Engineer, NPDES Permits Section
Office of Water and Watersheds
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155 (19-CO4)
Seattle, WA 98101-3188

Delivered electronically to: Wu.Jennifer@epa.gov

RE: Comments on Draft NPDES Permits for Federal Dams on the Columbia and Lower Snake Rivers

Dear Ms. Wu:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) submits the following comments on the draft National Pollutant Discharge Elimination System (NPDES) Permits for the federal dams on the Lower Columbia and Lower Snake Rivers, developed by the U.S. Environmental Protection Agency (EPA).¹ Our comments incorporate by reference those of the Columbia River Inter-Tribal Fish Commission.

Issuance—and enforcement—of these NPDES permits for the federal hydropower projects on the Columbia River Basin’s major mainstem rivers is a positive, overdue step in the right direction, hopefully leading to improved compliance with the Clean Water Act (CWA) and better protection for these vital riverine ecosystems. Maintaining and enhancing water quality in these rivers is integral to assuring healthy and sustainable environmental conditions necessary to provide for the exercise of tribal Treaty Rights and the essential natural resources on which those Rights are based—and which all of the region’s citizens depend on and enjoy. While the draft permits are a positive step, they need to go further—there is room to strengthen their terms and conditions, and they can and should be revised accordingly.

¹ The projects are operated by the U.S. Army Corps of Engineers (Corps) and include:

- Bonneville Project (WA0026778);
- The Dalles Lock and Dam (WA0026701);
- John Day Project (WA0026832);
- McNary Lock and Dam (WA0026824);
- Ice Harbor Lock and Dam (WA0026816);
- Lower Monumental Lock and Dam (WA0026808);
- Little Goose Lock and Dam (WA0026786); and
- Lower Granite Lock and Dam (WA0026794).

CTUIR Background

The CTUIR is a federally-recognized Indian tribe, with a reservation in Northeast Oregon and ceded, aboriginal, and usual and accustomed areas in Oregon, Washington, Idaho, and other Northwest states. The Columbia and Snake Rivers and their watersheds are situated in the heart of these areas and form the lifelines that tie them together. In 1855, predecessors to the CTUIR—ancestors with the Cayuse, Umatilla, and Walla Walla Tribes—negotiated and signed the Treaty of 1855 with the United States. The Treaty is a contract between sovereigns and is “the supreme Law of the Land” under the United States Constitution. In the Treaty the CTUIR ceded millions of acres of land to the federal government, and in exchange received assurances that various pre-existing tribal rights would be protected, and our interests would be respected, in perpetuity. A paramount objective in the Treaty was protecting and maintaining our tribal First Foods—water, fish, big game, roots, berries, and other plants—and the habitats and environmental conditions that support and sustain them, then, now, and forever. This remains a paramount objective of the CTUIR.

Water is the first of the CTUIR’s First Foods. It is also essential to the health and well-being of all the other foods—and us. For years the CTUIR has been concerned about persistent violations of applicable water quality standards for temperature in the mainstem rivers and the tributaries, posing increasing threats to already-imperiled salmon populations. EPA has a duty to honor and uphold the Treaty of 1855 and to act as a steward and trustee to ensure that its terms and commitments are fulfilled. In implementing federal environmental laws and adopting rules pursuant to them, the agency can and should always remain attentive to how such laws and rules and their concurrent treaty-based obligations must be read in tandem to be mutually supportive and reinforcing. Rules and regulations should be developed and adopted that not only carry out the mandates of the underlying statute, but also to concurrently promote EPA’s ability to honor and uphold the Treaty and the agency’s related Trust Responsibility to the CTUIR.

The Treaty of 1855 explicitly guarantees to the CTUIR and its members the right of “taking fish.” Associated with that right is the implicit assurance that there will be fish to take—they will exist. The waters necessary for that existence—for fish survival, health, and sustainability—must also be protected and maintained. Incorporated in the Treaty Right to fish is the right to water—clean, cool, available water necessary for fish to exist and propagate, and thereby effectuate tribal fishing rights. Protecting and maintaining our tribal First Foods is essential to safeguarding our Treaty Rights and the traditions, culture, and way of life they were meant to sustain.

The frequent, repeated violation of temperature water quality standards in the Columbia and Lower Snake Rivers has been a constant, ongoing hazard to ESA-listed salmon and other species. Mass fish mortality too often has been the result, such as the loss of an estimated 96% of endangered Snake River sockeye in 2015. For decades, the federal dams and their impoundments have contributed to excessively-high water temperatures. This plague has only worsened in recent years as climate change effects have intensified and become more pronounced. Conditions are not going to improve in the foreseeable future—quite the opposite. While the federal dams and impoundments may not be the exclusive factor in high water

temperatures currently, in too many instances they have been a significant, “but-for” cause of water quality criteria violations. It’s about time measures were taken to address them.

Comments and Recommended Revisions

The CTUIR DNR recognizes the substantial time and effort EPA has expended in developing these draft permits. Nevertheless, we believe that they can be improved and strengthened by revising them in certain respects. Primarily, **the permits would benefit from incorporating all of the terms and conditions found in Washington’s Clean Water Act Section 401 Certifications for the projects.**

The CTUIR DNR appreciates the temperature TMDL’s acknowledgement that the mainstem Columbia and Lower Snake dams are major factors in causing temperature water quality problems; they cause the “addition” of heat to the rivers. Changes to the federal hydropower system—operational (including alternative management of reservoir releases) and potentially structural (system configuration)—are needed to reduce temperatures to acceptable levels and limit additional water quality degradation. Yet there is no certainty that the problem of dam-induced high water temperatures will be addressed through other means or mechanisms such as the Columbia River System Operation (CRSO) Review or the NOAA Fisheries Biological Opinion for the Federal Columbia River Power System (FCRPS) under the ESA. Load allocations for the dams through NPDES permitting is an appropriate means to begin to address the situation, although not the endpoint, nor all that is needed.

The NPDES permits for the federal dams must apply to and regulate **all** sources of high water temperatures—heat pollution—at and from each of the projects. These sources include warm waters originating within the dams themselves and warm waters in the impoundments—the large, shallow reservoirs—above and upstream from the dams. These impounded waters with elevated temperatures are in fact caused by and the direct result of the existence of the dams themselves and their ongoing operations. Warm waters in the impoundments are created by the dams and would not be present, or would be present to lesser degree, if the dams were not there. These warm waters, caused and created by the dams, are then transmitted and transported through the projects, flowing over spillways and passing through turbines and discharged downstream, and thus must be regulated.

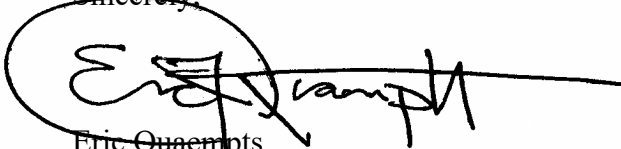
EPA should include **all** of the temperature-related conditions of Washington’s CWA Section 401 Certifications in the NPDES permits. One such condition in Washington’s Certifications—to incorporate the waste load allocations (WLAs) from the Lower Columbia and Snake Rivers Temperature TMDL—should be incorporated in the NPDES permits for the federal dams. The permits should also require compliance with all the load allocations—including the **temperature** load allocations for the reservoirs in EPA’s TMDL. Furthermore, we recommend that the permits require the dams to achieve **daily** compliance with heat load effluent limits as is required for other pollutant releases, and that the heat load limits apply to the period from **June** to October, not July to October.

Finally, the NPDES permits must also include temperature effluent limits for cooling water discharges pursuant to the TMDL's waste load allocations. It is not appropriate to seek to effectively change the TMDL's WLAs/effluent limits via conditions in a subsequent NPDES permit. The Corps has not adequately explained, supported, or justified its proposed WLAs to the extent they differ from those in EPA's TMDL.

Conclusion

The CTUIR DNR thanks you for your attention to our input and comments on the draft NPDES permits for the federal dams on the Columbia and Lower Snake Rivers. We encourage you to consider revising the permits as described above—incorporating all CWA Section 401 Certification terms and conditions—to more assuredly comply with the Clean Water Act and better protect our rivers, their waters, and the fish they support. We also look forward to EPA's response to these comments and all those earlier comments that were submitted in the earlier stages of this process. Ultimately, we hope that CTUIR and EPA can continue to effectively work in productive collaboration to honor the Treaty of 1855, implement the federal Trust Responsibility, and protect our shared natural and environmental resources for the benefit of all people.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Quaempts", is written over a circular stamp. The signature is written in a cursive, somewhat stylized font.

Eric Quaempts
Director, Department of Natural Resources
Confederated Tribes of the Umatilla Indian Reservation

Cc: Tribal Water Commission
Fish and Wildlife Commission

Dear EPA,

I appreciate the opportunity to comment on the Columbia River TMDL. It is great to see the EPA taking on this complex issue. It is extremely important that it is done in a manner that is truly protective of all the rivers native fish species at all their associated life stages. Based on the current draft I have several concerns that I would like to share. The following list identifies my top concerns for your consideration.

1.) The way water temperatures are measured, based on modeled projections at the tailraces is inappropriate and fails to capture high temperatures at stratified layers. It is also problematic to look at temperatures from at a 30-day average. Washington's water temperature criteria is based on an assessment of daily maximum temperatures and not averages. Washington's temperature criteria is based on either a daily or a seven-day assessment period. 30 days is completely inappropriate and fails to meet the intent of the law.

2.) The plan fails to offer suggested actions to lower temperature pollution from the Snake River Dams. To demonstrate this plan is an effective approach it should include recommendations that could actually lead to measurable reductions in temperature at these facilities in particular. It also fails to provide recommendations on the mainstem dams to achieve the goals. Without tangible actions for operators to consider it is unlikely that the goals will be met.

3.) EPA states, "One option for addressing the conflict created by the inability to achieve applicable water quality criteria at all times and all places is for the States to make changes to their applicable designated uses." This is a completely inappropriate position for the EPA to suggest. When the goal of our state is to restore fishable populations of salmon this is not a feasible option. The EPA must enforce existing law to protect designated uses. Since there is point source and non-point sources effecting water temperature pollution the EPA must therefore regulate those sources to ensure protection of designated uses. It is very concerning that the EPA would make this suggestion.

4.) The TMDL identifies Idaho and Canada as sources of temperature to the Columbia and Snake Rivers without any guidance on how to address these two sources of pollution.

These examples highlight some of my major concerns and as always in plans of this magnitude the devil is in the details. I urge the EPA to reevaluate their approach to the TMDL, including legitimate and tangible recommendations on how to actually accomplish the goals. As it currently is written this TMDL will not achieve the desired outcome, to protect the currently designated beneficial uses. The plan must ensure we are protecting all native fish at all their essential life stages. The foundation is there now it is time to ensure that existing law is applied so the TMDL are effective and factors in the future effects of climate change.

Respectfully,

Marc Gauthier- P.O. Box 38, Nine Mile Falls, WA 99026



Kurt Miller
Northwest RiverPartners
9817 Northeast 54th St, Suite 103
Vancouver, WA 98662

February 16, 2021

US Environmental Protection Agency, Region 10
Jennifer Wu
Wu.Jennifer@epa.gov

RE: EPA NPDES Permit Numbers: WA0026816, WA0026808, WA0026786, WA0026794, WA0026778, WA0026701, WA0026832, WA0026824

Dear Ms. Wu:

Thank you for the opportunity to comment on behalf of Northwest RiverPartners (“RiverPartners”) regarding National Pollutant Discharge Elimination System (“NPDES”) permits for the lower Snake River and lower Columbia River dams.

RiverPartners represents not-for-profit, community-owned utilities across Washington, Oregon, Idaho, Montana, and Wyoming. We also proudly represent supporters of clean energy, low-carbon transportation, and agricultural jobs.

Our mission is to lead the charge for the Pacific Northwest to realize its clean energy potential using hydroelectricity as the cornerstone. Our goals are to help fight climate change and restore healthy fish populations, while being inclusive of vulnerable communities and maintaining an affordable, dependable electric grid.

The focus of our letter is to suggest the appropriate parameters for the United States Environmental Protection Agency (“EPA”) to consider in issuing final permits to discharge pollutants pursuant to the provisions of the Clean Water Act (“CWA”), 33 USC §1251 et seq.

The specific permits we will be commenting on are:

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

HISTORY

Per the EPA's public notice:

EPA requested final 401 certification of these permits from the Washington Department of Ecology (Ecology) on March 18, 2020. On May 7, 2020, Ecology provided final certifications of these permits under Section 401 of the Clean Water Act. One condition in Ecology's final certifications was a condition to incorporate the wasteload allocations (WLAs) from the Lower Columbia and Snake Rivers Temperature Total Maximum Daily Load (Lower Columbia and Snake Rivers temperature TMDL). These revised draft permits now include the effluent limits that incorporate the WLAs.¹

RECOMMENDATIONS TO EPA

RiverPartners asks that EPA consider the following points in its NPDES permitting process for the aforementioned hydroelectric projects:

- **Ensure that Requirements Are Reasonable and Cost-Effective**

We ask that EPA adhere to reasonable and cost-effective requirements for implementation. Specifically, we request that EPA not require duplicative, over-burdensome monitoring conditions.

We note the acknowledgement from EPA's 2020 NPDES Permit Fact Sheet for the lower Snake River dams, which states:

...the hydroelectric generating facilities' permitted discharges have minimal impacts on temperatures in the Snake River, primarily because of dilution and effluent temperatures. In addition, note that influent temperatures are highly variable by depth. This evaluation is consistent with preliminary Columbia River temperature TMDL models that show minimal impact on temperature from point sources.²

Given the minimal effects of effluents associated with the lower Snake and Columbia river dams, it does not make sense to apply costly monitoring measures to these projects, which could make their electricity less affordable to the residents of the Pacific Northwest.

It is important to recognize that, unlike most federal agencies, the Bonneville Power Administration ("BPA")—which markets the power produced by the Federal Columbia River Power System—does not receive federal appropriations. BPA is self-financed and receives its revenues from power and transmission sales.

These sales are primarily made to not-for-profit utilities, such as electric cooperatives, public utility districts, and municipalities that serve some of the most vulnerable communities across the region. Therefore, costs applied to these hydroelectric facilities will have a direct impact on the region's electricity customers.

BPA, based on discussions with the US Army Corps of Engineers ("Corps"), estimates that EPA's proposed monitoring program would cost upwards of \$8.5 million in the first five years.

¹ [EPA 2021 Fact Sheet for USACE Lower Columbia River Hydroelectric Generating Permits](#) p 1

² [EPA 2020 Fact Sheet for USACE Lower Snake River Hydroelectric Generating Permits](#) p 29

In light of the economic devastation associated with COVID-19 consequences, this is truly not the time to add unnecessary financial burdens to homes, businesses, and communities. As a result, RiverPartners recommends using representative sampling, which could accomplish the same monitoring goal, but in a more financially responsible manner.

There is a high degree of uniformity among the four lower Columbia River dams. There is also a high degree of uniformity among the four lower Snake River dams. By selecting representative projects and reducing the frequency of monitoring, costs would be greatly reduced while still obtaining the necessary information.

- **Incorporate Revised Heat Load Effluent Limits into the Final NPDES Permits**

EPA should incorporate Corps-provided heat load limits as WLAs in a revised Total Maximum Daily Load for Temperatures and in the final NPDES permits. The Corps' proposed heat load limits reflect the best available information on the operations and discharges at dams. Using these revised heat load limits would, therefore, result in the most accurate WLAs.

- **Establish new CWA 401 Certifications for the Lower Snake and lower Columbia Projects**

EPA has proposed changes to the draft NPDES permits. EPA's language in its 2021 Fact Sheet states, "EPA is proposing changes to the draft permits."³

This action automatically triggers the requirement for new CWA 401 certifications for the lower Snake and lower Columbia projects. This contention is affirmed by Ecology's letter to EPA dated May 7, 2020, which specifies, "If EPA issues a final NPDES permit that contains any changes from the draft NPDES permit and does not include all requirements outline in this Certification, EPA's request for Certification is denied and EPA must request new Certification for the final NPDES permit."⁴ (emphasis in the original)

CONCLUSION

RiverPartners advocates for the balanced use of rivers for the benefit of communities and the environment. We are supportive of measures that have proven scientific benefit for salmon and that consider the effect that decisions have on vulnerable people.

With this mission in mind, we ask that EPA use this opportunity to create an NPDES Certification process that:

- is understanding of the relatively small magnitude of risk associated with lower Columbia River and lower Snake River projects as they related to temperature-related effluents.
- is not overly cumbersome or costly in its execution and monitoring requirements.
- Recognizes the need for new CWA 401 certifications as a result of changes to the NPDES permits, per Ecology requirements.

Thank you again for the opportunity to comment. RiverPartners looks forward to working with EPA throughout this and other key regulatory processes.

Best regards,

³ [EPA 2021 Fact Sheet for USACE Lower Columbia River Hydroelectric Generating Permits](#) p 2

⁴ WA Dept. of Ecology [letter](#) dated May 7, 2020



Kurt Miller
Executive Director
Northwest RiverPartners

Appendix 1: University of Washington PNW Temperature, Precipitation, and SWE Trend Analysis Tool; Kennewick, WA, 1955-2018

Temperature Precipitation Snow Water Equivalent

Year Range [?]
1955 to 2019

Variable Selection [?]
Average Temperature

Time Frame [?]
Annual

Trend Range [?]
Per Decade

Trend [?] - 0 +

Significant (S) ● ○ ●

Not Significant (NS) ● ○ ●

Insufficient Data (I) ● ● ●

Add to Graph [?]

None

Average

Statewide Average

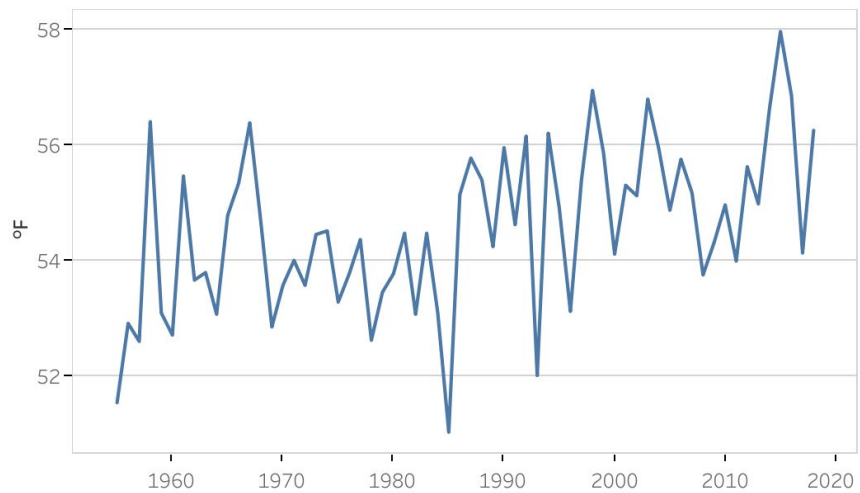
Trend Line

Trend Data (°F Per Decade) [?]

Kennewick WA S + 0.37 ■



Annual Average Temperature 1955-2018



Station Data Source: NOAA's U.S. Historical Climatology Network version 2.5.5.20190405

Statewide Data Source: NOAA's US Climate Division Dataset (nClimDiv)

February 12, 2021

US Environmental Protection Agency, Region 10

Jennifer Wu

Daniel Opalski

Submitted electronically

RE: Revised draft NPDES permits at the four Lower Columbia and four Lower Snake Rivers Dams

Dear Ms. Wu and Mr. Opalski:

The Public Power Council (PPC) appreciates this opportunity to add to our original comments, submitted on May 4, 2020, regarding EPA's revised draft National Pollutant Discharge Elimination System (NPDES) permits at eight federal hydro facilities on the Lower Columbia and Lower Snake Rivers. The revised draft NPDES permits would authorize discharges from cooling water, equipment, floor drains, sumps, facility maintenance water, and other miscellaneous discharges. PPC understands that the revision to the permits was made to incorporate heat load effluent limits from the May 2020 Lower Columbia and Snake rivers temperature TMDL. The 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.

PPC Additional Comments

PPC has included our original comments on the draft NDPES permits from May 2020, as we believe that the concerns raised in those comments are still relevant. Please find those comments attached. In addition to PPC's original comments, there are several points we would like to raise with respect to the EPA's recent revisions, enumerated below.

- 1) **EPA should incorporate the US Army Corps of Engineers' (Corps) proposed heat load effluent limits into the final NPDES permits.** As noted in EPA's NPDES Permit Fact Sheet, the data points originally used in the TMDL and NPDES permits were not from August, the time of year when river temperatures are the hottest. Additionally, the Corps is the owner/operator of the facilities and has the best information on the operations and discharges at the dams. Using the Corps' proposed heat load limits as listed in Table 2 of the Fact Sheets would result in the most accurate and relevant effluent limits.
- 2) **EPA should work with the Corps to identify the most appropriate representative sampling approach for monitoring, analysis, and reporting of effluent.** While PPC appreciates that EPA has made some efforts to use representative sampling, we believe that further progress could be made. The Corps' cost estimate for complying with the NPDES permits has risen from roughly \$5 million over five year to nearly \$9 million over five years. These costs are significant, especially considering that they are purely related to monitoring, analysis, and reporting. Given the similar nature of many discharges across these facilities, PPC believes that the EPA can further streamline the monitoring, analysis, and reporting requirements to accomplish the goals of the permits while minimizing overly burdensome requirements. A representative approach would accomplish this goal.
- 3) **The revisions to the NPDES permits should retrigger the 401 Certification process.** On page three of its 401 Certifications for these facilities, the Washington Department of Ecology (Ecology) specifically states that:

If EPA issues a final NDPES permit that contains any changes from the draft NDPES permit and does not include all the requirements outlined in this Certification, EPA's request for Certification is denied and EPA must request a new Certification for the final NPDES permit.

By incorporating temperature effluent limits, EPA has made material changes to the NDPES permits, which should retrigger the 401 Certification process under Ecology's requirements.

Thank you for your consideration of these comments.



Scott Simms

Executive Director of the Public Power Council

May 4, 2020

US Environmental Protection Agency, Region 10

Jennifer Wu

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:

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- 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

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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)¹. 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

¹ 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 Dam². 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 minimis³. 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 standards⁴, 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

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

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

⁴ 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,



Scott Simms

Executive Director of the Public Power Council

From: [REDACTED]
To: [Wu, Jennifer](#)
Subject: TMDL Comments
Date: Tuesday, February 16, 2021 2:17:07 PM

To whom it may concern,
please consider my comments and let me know they were received and read.

Thank you for the opportunity to comment on the Columbia River TMDL.

It is important that the approach be true to the idea that we are to protect our rivers, native species and their individual habitats. Upon reading I have several concerns, in the following list you find them.

1.) “One option for addressing the conflict created by the inability to achieve applicable water quality criteria at all times and all places is for the States to make changes to their applicable designated uses.”

If the goal is to restore fishable populations of salmon, it is up to the EPA to enforce existing law to protect designated uses. There is point source and not-point sources affecting water temperature pollution, therefore the EPA must regulate those sources to ensure protection of designated uses.

2.) The method in which water temperature is measured, based on modeled projections at the tailraces will fail to capture accurate high temperatures at stratified layers. A 30 day average is inappropriate, and inconclusive to the functional and working methods of for example, Washington State's water temperature criteria, which is based on daily maximum temperatures and not averages. The temperature criteria is based on either a daily or a seven-day assessment period.

3.) The TMDL points to Idaho and Canada as sources of temperature pollution to the Columbia and Snake Rivers, yet there is no suggestion on how to address these two sources of pollution.

4.) The plan lacks adequate suggestions for action that will lower temperatures from the Snake River Dams. A more effective approach would perhaps include tangible recommendations that will lead to measurable reductions in temperature at the Dam's in particular. Without concrete actions for operators to enact the likelihood of goals being met is decreased.

These thoughts sum up my concerns, details are important and are the difference between a fluffy approach that looks good on paper versus something that actually procures change. I request a reevaluation to the approach to the TMDL; an approach including real and tangible

suggestions to accomplish the goals. The current verbiage I suspect will fail to protect native fish in all their life stages, each which is critical. Now is the time to act so that the future can enjoy and not wonder why we did so little upon the precipice of climate change.

Regards,
Jessica Spurr



"Be the change you wish to see in the world"
~Gandhi~



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NORTHWESTERN DIVISION
PO BOX 2870
PORTLAND, OR 97208-2870

11 February 2021

SUBJECT: USACE Comments to EPA's DRAFT Proposed NPDES Permits for Lower Columbia River Hydroelectric Facilities: Bonneville Lock and Dam (#WA0026778), The Dalles Lock and Dam (#WA0026701), John Day Lock and Dam (#WA0026832), and McNary Lock and Dam (#WA0026824); Lower Snake River Hydroelectric Facilities: Ice Harbor Lock and Dam (#WA0026816), Lower Monumental Lock and Dam (#WA0026808), Little Goose Lock and Dam (#WA0026786), and Lower Granite Lock and Dam (#WA0026794) within the State of Washington; and Lower Columbia River and Lower Snake River Fact Sheets.

Jenny Wu
Environmental Engineer, NPDES Permits Section
Office of Water and Watersheds
U.S. EPA, Region 10
1200 6th Ave, Suite 155 (19-CO4)
Seattle, WA 98101

Dear Ms. Wu:

On behalf of the U.S. Army Corps of Engineers ("Corps") Northwestern Division, I submit the following comments on the Environmental Protection Agency's ("EPA") draft National Pollutant Discharge Elimination System ("NPDES") permits for the Corps' four lower Snake River and four lower Columbia River dams. These permits are as follows:

- Lower Columbia River Hydroelectric Facilities:
 - Bonneville Lock and Dam (#WA0026778),
 - The Dalles Lock and Dam (#WA0026701),
 - John Day Lock and Dam (#WA0026832), and
 - McNary Lock and Dam (#WA0026824);
- Lower Snake River Hydroelectric Facilities:
 - Ice Harbor Lock and Dam (#WA0026816),
 - Lower Monumental Lock and Dam (#WA0026808),
 - Little Goose Lock and Dam (#WA0026786), and
 - Lower Granite Lock and Dam (#WA0026794) within the State of Washington;and

I also submit the following comments on the Lower Columbia River and Lower Snake River Fact Sheets prepared by EPA for the draft NPDES permits.

On 18 March 2020, EPA proposed draft NPDES permits for public comment to authorize the discharges from these Lower Columbia and Lower Snake River facilities. The Corps submitted timely comments to EPA on 4 May 2020, and reiterate our request for EPA's consideration of those comments by submittal of this letter.

On 15 January 2021, EPA proposed changes to these draft NPDES permits and is now seeking additional public comments. The Corps now submits additional comments focusing on the proposed changes to these draft NPDES permits identified by EPA on 15 January 2021.

The Corps' comments are organized in the following manner:

SECTION A - Comments that Apply to All Eight (8) Draft General Permits
SECTION B (1) - Comments Specific to Individual Draft Lower Columbia River Permits
SECTION B (2) - Comments Specific to Individual Draft Lower Snake River Permits
SECTION C (1) - Comments Specific to the Lower Columbia River Fact Sheet
SECTION C (2) - Comments Specific to the Lower Snake River Fact Sheet

SECTION A Comments that Apply to All Eight (8) Draft General Permits: #WA0026778; #WA0026701; #WA0026832; #WA0026824; #WA0026816; #WA0026808; #WA0026786 and #WA0026794)

General Comment

Comment 1

In addition to the public comments in this letter, the Corps' 4 May 2020 public comments submitted to EPA on these draft NPDES permits remain a concern. The Corps appreciates all the hard work EPA has put into drafting and proposing changes to these draft NPDES permits that were originally issued for public comment in March 2020. The Corps' 4 May 2020 public comments stand. We anticipate that the final NPDES permits will address our concerns.

Schedule of Submissions (Table of Contents)

Comment 2

The annual temperature data report in the permit is identified with a due date of 31 January. To provide adequate time to complete the annual report, it should be due on 28 February. This is consistent with the Corps' comments provided on 4 May 2020 for all annual reports.

Limitations and Monitoring Requirements:

Comment 3

Requiring weekly monitoring (for the first year and possibly longer) and continuous monitoring (after the first 6 months of the effective date of the permit) will have a very high cost. Requiring such monitoring of all permitted outfalls is unnecessary to achieve compliance and is redundant; monitoring of required representative outfalls would be sufficient for determining whether permit thresholds have been exceeded. Furthermore, there is low risk of exceedance because there is low risk of pollutant discharge from these outfalls.

The estimated costs for monitoring and reporting, as described in the NPDES permits are significant. This will increase the cost to the Corps' and the Bonneville Power Administration,

and thus the region's ratepayers. The Corps' effort to start up our program for monitoring and reporting for these eight draft NPDES permits will span two years. Our rough order of magnitude estimate is \$3,600,000 in the first year and \$1,700,000 in the second year. Our ongoing annual cost estimate is more refined. In year three and future years, our estimate is \$1,100,000.

The Corps requests that EPA use a representative sampling approach that reduces the frequency and location of weekly, monthly, and continuous monitoring as described in both the Corps' and Bonneville's May 2020 public comment letters. Because these are run-of-river facilities that pass through river water with similar engineering and design builds, this request is reasonable.

Comment 4

I.B. Tables and I.B.12 (except McNary, which is I.B.9)

The Corps requests at least 6 months between permit issuance and permit effectiveness to meet the requirements for detecting and calculating heat load.

Comment 5

I.B. Tables and I.B.12 (except McNary, which is I.B.9)

Non-cooling water outfalls in the permits are included in waste load allocations. The Corps agrees with EPA's decision not to include these outfalls in the facility average monthly heat load. The permits' I.B. Tables and I.B. 12 paragraphs (except McNary, which is I.B.9) incorrectly address the exclusion of these outfalls from the facility average monthly heat load. Please see the Corps' comments to the Fact Sheets below (Comments 8 and 10), which request incorporation of the Corps' proposed revised heat load effluent limits into the permits. If EPA would like to discuss how the calculation should be modified, the Corps' is willing to do so.

SECTION B (1) Comments Specific to Individual Draft Lower Columbia River Permits:

Comment 6

Outfalls - The Dalles Lock and Dam (#WA0026701)

The permit information is out of date. The following outfalls no longer discharge from water-cooled transformers: 018, 019, 022, 023, 026, 027, 028, 029, 030 and 031. These outfalls should be removed from the final permit.

SECTION B (2) Comments Specific to Individual Draft Lower Snake River Permits:

Comment 77

Outfalls - Little Goose Lock and Dam (#WA0026786)

The permit information is out of date. The following outfall no longer discharges from the navigation lock fill valve sump: 013. This outfall should be removed from the final permit.

SECTION C (1). Comments Specific to the Lower Columbia River Fact Sheet

Comment 88

Table 2.

The proposed revised heat load effluent limits from the Corps should be incorporated into the final NPDES permits.

The Corps requests the Waste Load Allocations (WLAs) in Table T 2 as presented in the 2021 “Fact Sheet for Proposal of Heat Load Effluent Limits in Lower Columbia River Hydroelectric Generating Facilities” be incorporated into the final NPDES permits.

If EPA wants to address I.B.12 heat load effluent limit consistency for all outfalls and how the calculation should be modified, the Corps is willing to do so.

The Corps appreciates EPA’s coordination and collaboration on the development of the revised proposed WLAs identified in each draft NPDES permit. The Corps proposed these revised facility-wide heat loads, which reflect the design flows and maximum temperatures, as WLAs to be applied in a revised TMDL and subsequently in the final NPDES permits.

Comment 99

The proposed changes to the draft NPDES permits are changes that trigger the requirement for new 401 water quality certifications. EPA must request new certifications from the Washington Department of Ecology (WDOE) prior to issuing the final NPDES permits.

Based on the language in EPA’s 2021 draft NPDES permits fact sheets, the language states that “EPA is proposing changes to the draft permits”. The exact language is excerpted here:

NPDES Fact Sheet, 2021	Page 2 of 19
Public Comment	
On March 18, 2020 EPA proposed NPDES permits for public comment to authorize the discharges from the Lower Snake River Hydroelectric Generating Facilities. The public notice closed on May 4, 2020. The draft permits did not include heat load effluent limits. EPA is proposing changes to the draft permits to include heat load effluent limits and is seeking public comment on these limits.	

WDOE's 401 Certifications for these facilities issued on 7 May 2020, stated that "any changes from the draft NPDES permit" require a new 401 water quality certification. The exact language is excerpted here:

This Certification is based on the terms and conditions contained in the proposed draft NPDES permit. If EPA issues a final NPDES permit that contains any changes from the draft NPDES permit and does not include all requirements outlined in this Certification, EPA's request for Certification is denied and EPA must request a new Certification for the final NPDES permit.

The language above supports the conclusion that due to substantive changes to the permits, new 401 water quality certifications from WDOE are required.

Further, the Corps requests that EPA consider the concerns that we have identified on the existing 401 water quality certification through our previous comment letter to WDOE and the appeal filed with the Pollution Control Hearing Board and either decline to incorporate the relevant conditions, deem them waived, or some combination of these options. These documents were previously provided to EPA, but can be submitted again, if needed. Of particular note, the 401 water quality certifications require the Corps to address nonpoint source pollution (*i.e.*, heat) as a result of the existence of dams.¹ WDOE conveyed during the 28 January 2021 *TMDL for Temperature in the Columbia and Lower Snake Rivers* information meeting that TMDL load allocations for "[h]eat contributed by impounding the river in reservoir behind the dams considered a nonpoint source" would be implemented through 401 certifications.² The 401 water quality certifications go far beyond ensuring the discharges from point sources authorized by the NPDES permits comply with water quality requirements.

SECTION C (2) Comments Specific to the Lower Snake River Fact Sheet:

Comment 100

Table 2.

The proposed revised heat load effluent limits from the Corps should be incorporated into the final NPDES permits.

The Corps requests the WLAs in Table 2 as presented in the 2021 "Fact Sheet for Proposal of Heat Load Effluent Limits in Lower Snake River Hydroelectric Generating Facilities" be incorporated into the final NPDES permits.

If EPA wants to address I.B.12 heat load effluent limit consistency for all outfalls and how the calculation should be modified, the Corps is willing to do so.

¹ Condition B.2.a. of the 401 certifications require "In addition to the draft NPDES permit requirements for temperature monitoring at most outfalls, the Permittee must implement temperature control strategies and meet the load allocations in the Columbia and Lower Snake Rivers Temperature Total Maximum Daily Load once issued."

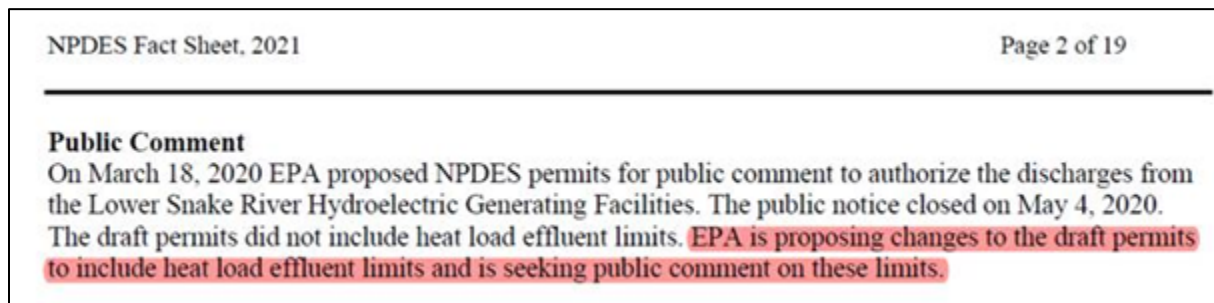
² https://fortress.wa.gov/ecy/ezshare/wq/WaterQualityImprovement/Jan28_StakeholderInformationMeeting.pdf

The Corps appreciates EPA’s coordination and collaboration on the development of the revised proposed WLAs identified in each draft NPDES permit. The Corps proposed these revised facility-wide heat loads, which reflect the design flows and maximum temperatures, as WLAs to be applied in a revised TMDL and subsequently in the final NPDES permits.

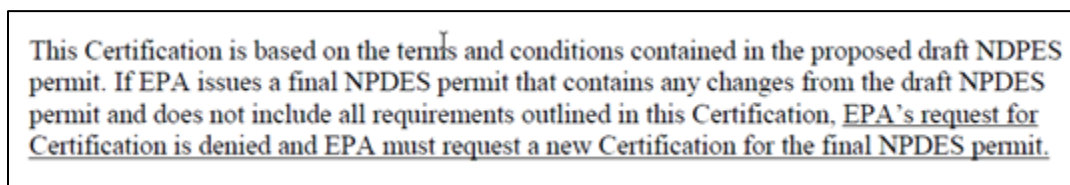
Comment 111

The proposed changes to the draft NPDES permits are changes that trigger the requirement for new 401 water quality certifications. EPA must request new certifications from the WDOE prior to issuing the final NPDES permits.

Based on the language in EPA’s 2021 draft NPDES permits fact sheet, the language states that “EPA is proposing changes to the draft permits”. The exact language is excerpted here:



WDOE’s 401 Certifications for these facilities issued on 7 May 2020, stated that “any changes from the draft NPDES permit” require a new 401 Certification. The exact language is excerpted here:



The language above supports the conclusion that due to substantive changes to the permits, new 401 water quality certifications from WDOE are required.

Further, the Corps requests that EPA consider the concerns that we have identified on the existing 401 water quality certification through our previous comment letter to WDOE and the appeal filed with the Pollution Control Hearing Board and either decline to incorporate the relevant conditions, deem them waived, or some combination of these options. These documents were previously provided to EPA, but can be submitted again, if needed. Of particular note, the 401 water quality certifications require the Corps to address nonpoint source pollution (i.e., heat) as a result of the existence of dams. WDOE conveyed during the 28 January 2021 TMDL for Temperature in the Columbia and Lower Snake Rivers information meeting that TMDL load

allocations for “[h]eat contributed by impounding the river in reservoir behind the dams considered a nonpoint source” would be implemented through 401 certifications. The 401 water quality certifications go far beyond ensuring the discharges from point sources authorized by the NPDES permits comply with water quality requirements.

Closing

The requirements contained in the final NPDES permits, including any conditions in the 401 water quality certifications that may be incorporated into the final permits, should be focused on regulating the discharges from the discrete point sources described in the Corps’ NPDES permit applications, as opposed to the facilities as a whole. Additionally, the conditions in the final NPDES permits, or associated 401 Certifications, should not impair the Corps’ ability to effectively operate and maintain the dams for the multiple congressionally-authorized purposes. Further, the language of the Clean Water Act (CWA) explicitly recognizes that the provisions of the CWA cannot be construed to affect the Corps’ ability to maintain navigation. *See* 33 U.S.C. § 1371(a); *In re Operation of Missouri River System Litigation*, 418 F.3d 915 (8th Cir. 2005).

Thank you for the continued and positive coordination. The Corps appreciates the opportunity to submit these comments for consideration. We look forward to continuing to work closely with EPA on the draft NPDES permits for the four lower Snake River and four lower Columbia River facilities. If you have any questions regarding the comments above, please contact Mr. Joseph Lapeyre at 503-808-3881.

Sincerely,

Tony R. Kirk
Chief, PDS Operations Division
Northwestern Division, USACE



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

February 12, 2021

Jennifer Wu
EPA Region 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
Sent by email only (wu.jennifer@epa.gov)

**RE: Revised Draft Discharge Permits for Federal Hydroelectric Projects
on the Lower Columbia and Lower Snake Rivers**

Dear Jennifer Wu:

These comments are in response to EPA's public notices of revised draft National Pollutant Discharge Elimination System (NPDES) permits for eight federal hydroelectric projects on the Lower Columbia and Lower Snake Rivers. Those projects are: Bonneville Project, Dalles Lock and Dam, John Day Project, McNary Lock and Dam, Ice Harbor Lock and Dam, Lower Monumental Lock and Dam, Little Goose Lock and Dam, and Lower Granite Lock and Dam.

EPA first public noticed draft permits on March 18, 2020 and requested Clean Water Act Section 401 certifications from Washington State on the same date. On May 7, 2020, Ecology provided certifications under Clean Water Act Section 401, with clear conditions the operators must meet to protect water quality.

Subsequently, on May 18, 2020, EPA issued the Columbia and Lower Snake Rivers Temperature TMDL [total maximum daily load]. EPA is now taking comments on two alternative Waste Load Allocations (WLAs), one of which it will incorporate into these NPDES permits. The first set of WLAs EPA is considering are listed in the TMDL. The alternative set was proposed by the US Army Corps of Engineers (Corps). Ecology's understanding is that if EPA chooses to implement the Corps' proposal, EPA will also amend the TMDL before permit issuance.

These comments address two issues. First, Ecology provides input into the two alternative WLAs that EPA has proposed. Second, Ecology notes that EPA is legally required to include Washington's Section 401 certification conditions in the final NPDES permits.

Waste Load Allocation Comments:

Both sets of WLAs fall within the scope of Ecology's Section 401 certifications conditions necessary to prevent exceedances of water quality criteria. The allocations proposed by the Corps appear to represent a total increase of roughly 10% or less for the eight facilities combined in Washington State. Much of the change appears to result from attempts to better quantify summer

water temperatures, and account for all generating facilities and design discharge rates. The Corps has proposed larger WLA adjustments for its facilities on the Columbia River in Oregon, for similar reasons. Others have also requested WLA adjustments, including Public Utility Districts with facilities on the mid-Columbia.

We understand the above requests and that others could be accommodated while maintaining a reserve allocation for point sources, all within the existing point source allocation (0.1°C) without impacting TMDL Load Allocations (LAs). Provided that is the case, it appears either choice by EPA would be consistent with EPA's approach to developing WLAs for point source discharges in the Columbia and Lower Snake Rivers Temperature TMDL.

Comments on Incorporating Ecology's 401 Water Quality Certifications in Permits:

As required by 33 U.S.C. sec. 1341(d), EPA must incorporate all the conditions of Ecology's Section 401 certifications into the final permits. For those requirements of Ecology's Section 401 water quality certifications that have corresponding special condition or general condition in the permits, we recommend EPA add the required language directly to the corresponding condition in each permit.

For Section 401 certification condition B.2. Water Quality Standards Attainment, EPA must include a new special condition in each permit to ensure that all flows associated with the dams comply with state requirements for attainment of water quality standards. Each permit should also include a statement that the permittee must comply with Ecology's Section 401 certification, and include the certification as an appendix. We are available to discuss any questions with you prior to permit issuance.

Protecting and restoring salmon is a priority for the State of Washington. We are working with our partners to address the temperature issues on the Columbia and Snake rivers to provide cool, clean water for salmon. To further those efforts, we need to have the same oversight on the federal dams to meet the water quality standards as the non-federal facilities on these rivers. We look forward to continuing to work with the federal government to address all water quality impacts, including temperature, of the federal dams.

If you have any questions or would like to discuss this matter further, please contact Gregory Zentner, PE at greg.zentner@ecy.wa.gov or (360) 878-2169; or Eleanor Ott, PE at eleanor.ott@ecy.wa.gov or (360) 407-6433.

Sincerely,



Vincent McGowan, PE
Water Quality Program Manager

cc: Melissa Gildersleeve
Jeff Killelea
Loree' Randall