Response to Comments
Dworshak Dam, ID0028568
September 20, 2023

Summary

On September 29, 2022, the U.S. Environmental Protection Agency Region 10 (EPA) issued a public notice for the proposed issuance of a National Pollutant Discharge Elimination System (NPDES) permit for Dworshak Dam (ID0028568). The public comment period closed on November 14, 2022.

On January 11, 2023, EPA submitted a Biological Evaluation (BE) to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) as required by the Endangered Species Act (ESA). In the BE, EPA determined that the permitting action was not likely to adversely affect (NLAA) any ESA-listed species or designated critical habitat that occur or may occur within the action area. EPA requested that the Services concur on this determination. On March 16, 2023, EPA received concurrence from USFWS that the action is NLAA Bull Trout. On February 16, 2023, EPA received concurrence from NMFS that the action is NLAA Snake River spring/summer Chinook salmon and its designated critical habitat and the action will have no effect on Snake River basin steelhead. NMFS did not concur with EPA's NLAA determination for Snake River fall Chinook salmon and its designated critical habitat, and Snake River basin steelhead. Thus, formal consultation was required. On August 18, 2023, EPA received a Biological Opinion (BiOp) from NMFS that included reasonable and prudent measures (RPMs) and nondiscretionary terms and conditions that EPA is required to comply with to minimize the incidental take of listed species as a result of the proposed action.

This document presents EPA's response to comments received during the public comment period, identifies conditions incorporated into the permit pursuant to Clean Water Act section 401(d), and identifies conditions incorporated into the permit as the result of ESA consultation.

Changes in response to public comment:

EPA received comments from the following entities:

- Bonneville Power Administration (BPA)
- Army Corps of Engineers (Corps)
- Public Power Council (PPC)
- Idaho Department of Environmental Quality (IDEQ)

EPA has summarized similar comments from different entities in this document when developing its responses.

As a result of comments received, the following revisions were made to the permit:

- EPA corrected the numbering in the schedule of submissions.

- EPA clarified the submittal process for plans and reports to the Nez Perce Tribe and NMFS in Permit Part III.B.3 and other sections of the permit that refer to submittals of plans and reports to the Nez Perce Tribe and NMFS.
- EPA corrected Permit Part II.D.2 to require the Permittee to notify the Nez Perce Tribe instead of the Colville Tribes for submittal of the Polychlorinated Biphenyls (PCB) Management Plan.
- EPA changed the footnote for pH monitoring in Table 1 in the permit to: "During the first 12 months after the effective date of the permit, the required monitoring frequency is 1/week. In subsequent years, the required monitoring frequency is 1/month."
- EPA changed the footnote for oil and grease monitoring frequency in Table 1 of the permit to: "`During the first 12 months after the effective date of the permit, the required monitoring frequency is 1/week. If there are exceedances in the first 12 months after the effective date of the permit in an outfall, the frequency will remain 1/week for that outfall. If there are no exceedances in an outfall, the required monitoring frequency is reduced to 1/month for that outfall."
- EPA removed the reference to lubricated wire ropes at the facility as part of the Environmentally Acceptable Lubricants (EAL) Annual Report in Permit Part II.C.1.

As a result of comments received, the following revisions were made to the 401 certification:

- EPA clarified that the Corps is required to notify the Nez Perce Tribe when there is an exceedance of 110% total dissolved gas (TDG) over a 12-hour period. EPA also clarified that when communications are interrupted and cannot be restored within 24 hours, notification should be made as soon as communications are restored.
- EPA revised the timing requirements for mercury sampling, from 'sampling must occur twice a year in March and August, ~~beginning in March 2024'~~ to 'sampling must occur twice a year in March and August**.**' EPA made this change in the 401 Certification and Permit Part I.B.11.
- EPA modified the contact information for the Nez Perce Tribe.

Editorial Corrections to the Permit

EPA has corrected the following editorial errors in the permit:

- EPA has corrected typos, formatting, punctuation errors, and added abbreviations in the permit.
- EPA clarified the submittal dates for plans…
- EPA has changed the reference in Permit Part II.E.2 from "Appendix A: BMP Plan" to "Appendix B: BMP Plan."
- EPA corrected Permit Part II.D.2 to not require submission of the PCB Monitoring Plan (PMP) to the Washington Department of Ecology.
- EPA has narrowed the Temperature Data Report submittal to require only Excel or Excel-compatible file submittals. Permit Part I.B.11(b) now states (see bold): "Use the temperature device manufacturer's **or compatible** software to generate (export) an Excel **or Excel-compatible** ~~text or electronic ASCII text~~ file."

- EPA clarified that the EAL Annual Reports, PMP, PCB Annual Reports, Cooling Water Intake Structure (CWIS) Evaluation Report, and CWIS Annual Certifications must be retained on site and made available to EPA and the Nez Perce Tribe, or an authorized representative, upon request, in Permit Parts II.C, II.D., and II.E.
- EPA clarified the language in Permit Part II.B. and the associated reference in the Schedule of Submissions to clarify when the Best Management Practices (BMP) Annual Reports are to be submitted (see bold): "The permittee must submit the BMP Annual Report by February 28th **following the first calendar year of permit coverage** and annually thereafter."
- EPA clarified the language in Permit Part II.C to clarify when the EAL Annual Reports are to be submitted (see bold): "The permittee must submit the EAL Annual Report by February 28th **following the first calendar year of permit coverage** and annually thereafter."
- EPA removed the defunct URLs for EPA-approved QA/QC and chain-of-custody procedures in Permit Part II.A. EPA will provide current links to these documents upon request.
- EPA corrected the subject and file name for report submission in Permit Part III.I.3.
- EPA updated the penalty amounts in Section IV.B *Penalties for Violations of Permit Conditions* to reflect current penalty amounts at the time of permit issuance.

Reasonable and Prudent Measures (RPMs) from ESA Consultation

On August 18, 2023, EPA received a BiOp from NMFS which included an Incidental Take Statement (ITS) and RPMs for EPA to implement in the permit. The BiOp sets forth RPMs which are considered by NMFS to be "necessary or appropriate to minimize the impact of the amount or extent of incidental take." The BiOp also sets forth Terms and Conditions that "the federal action agency must comply (or must ensure that any applicant complies) with" in order to be "exempt from the prohibitions of section 9 of the ESA."

RPM #1: The EPA shall provide NMFS with an opportunity to review and comment on the draft CWIS study plan and any draft reports.

NMFS provided the following Term and Condition regarding RPM #1: To implement RPM 1, the EPA will ensure that the USACE gives NMFS an opportunity to review and comment on the draft CWIS study plan and any draft reports generated by the plan. Drafts and the final report will be emailed to Ritchie.Graves@noaa.gov and Jeffrey.Brown@noaa.gov.

As a result of RPM #1, EPA changed Permit Part II.E and the Schedule of Submissions to require the permittee to submit a *draft* CWIS Evaluation Report to EPA, NMFS, and the Nez Perce Tribe, within 12 months after the effective date of the permit. Previously, the *final* CWIS Evaluation Report was due 12 months after the effective date of the permit. The permittee is then required to allow NMFS a period of 45 days after submittal to review and provide comments on the draft CWIS Evaluation Report and any associated reports generated by the report. The

permittee must then submit the final CWIS Evaluation Report to EPA, NMFS, and the Nez Perce Tribe, within 18 months after the effective date of the permit.

RPM #2: The EPA shall provide NMFS the final versions of the required BMP, EAL, and PCB Management Plans and all monitoring reports generated by these plans.

NMFS provided the following Term and Condition regarding RPM #2: To implement RPM 2, the EPA will make available to NMFS the final versions of required BMP, EAL, PCB Management Plans, and all monitoring reports generated by these plans. The plans and monitoring reports will be emailed to Ritchie.Graves@noaa.gov.

As a result of RPM #2, EPA changed Permit Parts II.B, II.C, II.D, III.B.3 and associated sections of the Schedule of Submissions to include NMFS as a required recipient of these reports.

Response to Comments

The comments are in the following categories: General Comments; Limits and Monitoring; Permit Conditions; and 401 Certification.

General Comments

Comment 1. The reference for the 2014 Integrated Report for Idaho uses an outdated link in the draft fact sheet. The most current Integrated Report for Idaho is the 2022 IR, approved by EPA on May 25, 2022, replacing the 2018/2020 IR. (IDEQ)

Response. EPA Region 10 does not revise fact sheets issued with draft permits after the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. EPA acknowledges that the most current Integrated Report for Idaho is the 2022 IR. EPA reviewed the 2022 IR and there are no changes to the information in the fact sheet or that affect the permit limits. No changes were made to the permit as a result of this comment.

Comment 2. The signature page does not include an issue date. The Environmental Protection Agency (EPA) has generously allowed a 6-month issue date before making the permits effective. This has proved vital in ensuring the Corps can request funding and set up contractual actions to comply with the permits. The Corps requests EPA add a 6-month period of time upon issuance before the permits become effective. (USACE, p. 1)

Response. Consistent with EPA Region 10's other dam permitting actions, there will be 6 months between the issuance date and the effective date of this permit.

Comment 3. In the Schedule of Submissions, the PCB management plan is listed as item #5. There are two additional 5's after this instance. The numbering sequence should list in numerical order from 1-12. (USACE, p. 2)

Response. EPA agrees the numbering sequence should be in numerical order. EPA has revised the numbering in the Schedule of Submissions list.

Comment 4. The Corps requests that the tribe's contact information be provided in Permit Part I.B11.(b), Permit Part II.B.5, Permit Part I.B.11(b), Permit Part II.D.5, and Permit Part II.D.2. (USACE, p. 3-5)

Response. The correct contact for the Nez Perce Tribe is kenc@nezperce.org as described in Permit Part II.F.3. All reports and submissions to the Nez Perce Tribe, including those in Permit Parts I.B.11(b), II.B.5, II.D.2, and II.D.5. must be submitted as described in Permit Part III.B.3, unless agreed upon by the Tribe. EPA clarified the process for submittal and revised the contact information in Permit Part III.B.3. EPA has also revised the contact information for the Tribe in the 401 certification.

Comment 5. In Permit Part II.D.2, the Corps requests clarification and reason concerning notification to the Colville Tribes. Perhaps this is supposed to be the Nez Perce Tribes? (USACE, p. 5)

Response. The reference to the Colville Tribes was a typographical error in the permit. EPA has revised the permit reference to the Nez Perce Tribe instead of the Colville Tribes.

Comment 6. The numbers in Figure 1. *Average Daily Outflow, including spill, at Dworshak Dam 2016-2020*, are not accurate to the flow rates coming into the reservoir, leaving the reservoir, or anywhere in the North Fork or Main Stem of the Clearwater River. To give some perspective, 60 KCFS coming into the reservoir would be significant, and 1 KCFS is most typical during fall. This chart shows 300 KCFS as a normal peak in June, and 30 KCFS in September, October, and November. The Corps requests this figure and any associated reference be accurately corrected and considered. (USACE, p. 8)

Response. EPA Region 10 does not revise fact sheets issued with draft permits after the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. EPA acknowledges the corrected flow rates provided by the commentor. The corrected flow rates do not affect the conditions in the permit. No changes were made to the permit as a result of this comment.

Comment 7. In Fact Sheet Part II.B. *Equipment and Facility Maintenance-Related Water Discharges*, EPA states the primary authorized purpose of the facility is flood damage reduction. The congressionally authorized purposes of the project are hydropower and flood risk mitigation. (USACE, p. 6)

Response. EPA agrees that the congressionally authorized purposes of the project are hydropower and flood risk mitigation. EPA Region 10 does not revise fact sheets after the close

of the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. This comment does not affect the conditions in the permit, therefore, no changes were made to the permit as a result of this comment.

Comment 8. In Fact Sheet Part II.B. *Equipment and Facility Maintenance-Related Water Discharges,* EPA states that Dworshak Dam has the capacity to protect up to a 100-year flood event, however, the probable maximum flood is typically calculated as a 500-year event and not 100-year event. (USACE, p. 6)

Response. EPA agrees that the probable maximum flood is typically calculated as a 500-year event. EPA Region 10 does not revise fact sheets after the close of the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. This comment does not affect the conditions in the permit, therefore, no changes were made to the permit as a result of this comment.

Comment 9. In Fact Sheet Part II.B. *Equipment and Facility Maintenance-Related Water Discharges,* it is not exactly correct to classify the discharges as containing 'equipment and floor drain-related water', the Corps requests this sentence be removed from the fact sheet. (USACE, p.6)

Response. EPA acknowledges this comment. EPA Region 10 does not revise fact sheets after the close of the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. This comment does not affect the conditions in the permit; therefore, no changes were made to the permit as a result of this comment.

Comment 10. In Fact Sheet Part II.B. *Equipment and Facility Maintenance-Related Water Discharges,* Dworshak Dam has no lubricated wire rope that hydroelectric generating water may be exposed to, and there is no 'other in-water equipment'. The Corps requests this statement be removed from the fact sheet. (USACE, p.6)

Response. In the permit application, the Corps requested coverage for lubricated wire rope and other in-water equipment at Dworshak Dam. However, EPA acknowledges that there is no lubricated wire rope or 'other in-water equipment' that hydroelectric generating water may be exposed to at Dworshak Dam. EPA Region 10 does not revise fact sheets after the close of the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. EPA removed the reference to lubricated wire ropes as part of the EAL Annual Report in Permit Part II.C.1.

Comment 11. In Fact Sheet Part II.B. *Equipment and Facility Maintenance-Related Water Discharges,* non-contact cooling water is not used in our transformers. The Corps requests this statement be removed from the fact sheet." (USACE, p. 6).

Response. EPA acknowledges that there is no non-contact cooling water used in the transformers at Dworshak Dam. EPA Region 10 does not revise fact sheets after the close of the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. This comment does not affect the conditions in the permit; therefore, no changes were made to the permit as a result of this comment.

Comment 12. In Fact Sheet Part II.B. *Equipment and Facility Maintenance-Related Water Discharges,* in the 'equipment drainage and floor drainage' section, Dworshak Dam does not have a 'spillway sump'. Furthermore, this section appears to reference that the Corps dumps 'oil, grease and other water from equipment and floor drains' out of the sumps and fails to recognize that we have an Oil Water Separator (OWS) in the drainage sump that detects and removes these contaminates. The OWS is mentioned later in this section; however, as designed, the OWS would never allow the discharge of these items. The Corps requests that this statement be removed from the fact sheet. (USACE, p. 7)

Response. EPA acknowledges that Dworshak Dam does not have a spillway sump, and that the OWS, as designed, does not allow the discharge of oil and grease. EPA Region 10 does not revise fact sheets after the close of the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. This comment does not affect the conditions in the permit; therefore, no changes were made to the permit as a result of this comment.

Comment 13. In Fact Sheet Part II.B. *Equipment and Facility Maintenance-Related Water Discharges,* the transformer sump is NOT a source of dam leakage flows, rather is surface water only that falls onto the transformer pads. The Corps requests that this statement be corrected to reflect the transformer collects rainwater only. (USACE, p. 7)

Response. EPA acknowledges that the transformer sump only collects surface water. EPA Region 10 does not revise fact sheets after the close of the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. This comment does not affect the conditions in the permit; therefore, no changes were made to the permit as a result of this comment.

Comment 14. In Fact Sheet Part II.B. *Equipment and Facility Maintenance-Related Water Discharges,* the only cooling water discharge that enters the drainage system is our HVAC and governor air compressor heat exchangers. The Corps requests this information be included in the fact sheet." (USACE, p. 7)

Response. EPA acknowledges that the only cooling water discharge that enters the drainage system is the HVAC and governor air compressor heat exchanger water. EPA Region 10 does not revise fact sheets. Instead, EPA Region 10 corrects information and provides any additional

explanation in the response to comments document. This comment does not affect the conditions in the permit; therefore, no changes were made to the permit as a result of this comment.

Comment 15. In Fact Sheet Part II.B. *Equipment and Facility Maintenance-Related Water Discharges,* in the 'Equipment and Facility Maintenance-Related Water Discharges' section, the fact sheet mentions Navigation Locks, which do not exist at Dworshak Dam. The Corps requests that this information be correctly reflected in the fact sheet. (USACE, p. 7)

Response. EPA acknowledges that there are no navigation locks at Dworshak Dam. EPA Region 10 does not revise fact sheets after the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. This comment does not affect the conditions in the permit; therefore, no changes were made to the permit as a result of this comment.

Comment 16. In Fact Sheet Part II.B. *Equipment and Facility Maintenance-Related Water Discharges,* EPA states, during equipment maintenance operation, discharges occur from the dewatering of equipment containing river water such as the turbine, penstock, navigation locks, and dewatering sumps, which may contain residual oil and grease, detritus, or silt. The statement "which may contain oil and grease" is misleading and should be deleted. Table 3, Summary of Pollutants Detected in Outfalls on page 14 supports the deletion of this statement. In addition, Dworshak Dam does not have a navigation lock. (USACE, p. 7)

Response. EPA acknowledges this comment; however, EPA maintains that equipment and facility maintenance related discharges are a potential source of oil and grease. EPA Region 10 does not revise fact sheets after the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. No changes were made to the permit as a result of this comment.

Comment 17. In Fact Sheet Part II.B. *Equipment and Facility Maintenance-Related Water Discharges,* EPA states, the drainage sump (Outfall 004) is the primary source of potential oil and grease discharges at Dworshak Dam. The statement "(Outfall 004) is the primary source of potential oil and grease discharges at Dworshak Dam," is a misleading statement and should be deleted. Table 3, Summary of Pollutants Detected in Outfalls on page 14 supports the deletion of this statement. In addition, Dworshak Dam does not have a navigation lock. (USACE, p. 7)

Response. EPA acknowledges this comment; however, EPA maintains that the drainage sump is a potential source of oil and grease. EPA Region 10 does not revise fact sheets after the close of the public comment period. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. No changes were made to the permit as a result of this comment.

Comment 18. Regarding the Outfall Water Source Chart, pdf page 44, the Drainage Sump discharges all year. The Unwatering Sump discharges ~2 days a year. The Corps requests this be changed to accurately reflect the ~ day discharge duration.

Response. EPA acknowledges the correction to the discharge frequencies of the Drainage Sump and Unwatering Sump. EPA Region 10 does not revise fact sheets after the close of public notice. Instead, EPA Region 10 corrects information and provides any additional explanation in the response to comments document. This comment does not affect the conditions in the permit; therefore, no changes were made to the permit as a result of this comment.

Limits and Monitoring

Comment 19. In Permit Part I.B.4., *Limitations and Monitoring Requirements*, the permit requires the permittee to "observe the surface of the receiving water in the vicinity of where the effluent enters the surface water at a minimum of once per week and report whether an oil sheen has been observed in accordance with Permit Part III."

The project currently monitors the outfalls for sheens daily. If sheens are observed, they are reported to the National Response Center. This reporting requirement is redundant and unnecessary. Please remove this requirement as there would be a written record of the incident via the National Response Center report. (USACE, p. 2)

Response. Permit Part I.B.4 states that the "permittee is prohibited from discharging a visible oil sheen…." To ensure that this narrative effluent is met, the permit requires the Corps to conduct weekly monitoring of oil sheens. This monitoring is representative of the activity that is being monitored. See 40 CFR 122.41(j)(1). EPA acknowledges that the project currently monitors the outfalls for sheens daily and reports to the National Response Center. However, the project does not currently report results to the NPDES Permitting Program. Since the project already monitors for oil sheens daily, EPA expects weekly monitoring and reporting will require minimal additional time and expense for the Corps.

The draft permit also requires the permittee to monitor for pH at each of the outfalls weekly during the first 12 months of the permit and monthly thereafter if there are no exceedances. However, since the Corps will be monitoring oil and grease weekly, EPA has revised the pH monitoring in the final permit to weekly for the first 12 months after the effective date of the permit and monthly thereafter regardless of the sample results. EPA has made this revision to pH monitoring footnote in Table 1. EPA has also clarified the wording of the oil and grease monitoring footnote in Table 1 to require 1/week monitoring during the first 12 months after the effective date of the permit.

Comment 20. In Permit Table 1 and Parts II.B.10(a) and (b), the permit requires monthly temperature monitoring during the first six months of the permit, followed by continuous temperature monitoring after the first six months after the effective date of the permit. For the reasons below, the Corps requests that temperature monitoring be reduced to weekly and monthly grab samples.

The North Fork of the Clearwater River is not impaired for temperature, nor is it a requirement to any 401 certifications for that stretch of river basin. In fact, the region relies on the Corps water withdrawals to cool river temperatures downstream of the project. While the permit does not spell out any temperature limits, the Corps believes that installing continuous monitoring equipment is unnecessary and prohibitively expensive. If the EPA implements baseline temperature requirements, the Corps requests weekly and monthly grab samples to record temperature for the reporting period. This would provide more than enough data to evaluate data for the next permit issuance. (USACE, p. 3, 9)

Response. EPA recognizes that Dworshak Dam is important for cooling temperatures downstream of the project. EPA included temperature monitoring in the permit in order to better understand the impact of the project's operations on effluent temperatures. Continuous temperature monitoring will also help ensure the beneficial uses in the receiving water are supported. In addition, Dworshak Dam is located upstream of the Dworshak National Fish Hatchery, and temperature fluctuations affect hatchery operations. No changes were made to the permit as a result of this comment.

Comment 21. Section II.C of the Fact Sheet and Section I.B (and Table 1) of the Permit should better describe oil discharges and a visible oil sheen as being focused on and limited to permitted outfalls, and not oil spills/leaks generally, which are covered by Section 311 of the Clean Water Act and the Facilities SPCC Plan – although Section I.A of the Permit does state "the permittee is authorized to discharge pollutants from the outfalls specified herein . . . within the limits and subject to the conditions set forth herein." (USACE, p.8)

Response. The permit addresses oil and grease from outfalls and also any equipment in the facility that has an oil to water interface that could result in discharges from the facility. The Corps requested coverage for outfalls and greased bushings, lubricated wire rope, and in-water equipment, although according to comment #10 there is not any lubricated wire rope or other in-water equipment. Any discharges from equipment covered by the permit that results in a visible oil sheen is required to be reported. No changes were made to the permit as a result of this comment.

Permit Conditions

Comment 22. In Permit Part II.D.1. *PCB Management Plan,* the draft permit requires the development of a PCB Management Plan within one year of the effective date of the permit. The PCB Management Plan and reporting requirements are overly broad and unjustified, especially given the permit specifically prohibits the discharge of PCBs. The permit fact sheets do not identify any historic sampling that has found discharges of PCBs from the identified outfalls and there is no indication that permitted discharges/outfalls may include PCBs in the future. While 33 USC §1314 [Section 304(e)] does authorize EPA to promulgate regulations to establish BMPs at the facility to prevent runoff, spillage, or leaks of toxic substances (e.g., PCBs) located at a facility, there must be some indication such toxic substances "may contribute significant amounts of such pollutants to navigable waters." In other words, there must be some reasonable likelihood the PCBs will become part of the permitted discharges. Similarly, 40 CFR 122.44(k) allows establishment of BMPs to "control or abate the discharge of pollutants." Again, there should be some likelihood the PCBs will become part of the permitted discharges to justify the expense, resources and effort needed to comply with such PCB requirements. Sampling and identification of PCB containing equipment has historically been conducted at the facilities as required by the Toxic Substances Control Act (TASCA) of 1976. The PCB requirements go well beyond TSCA and are unnecessary given the lack of PCBs in any of the samples submitted to EPA during the application process. The PCB monitoring, plan, and annual reporting requirements are not justified, overly burdensome, and should be removed from the permits. Further, the Corps already has a yearly requirement to report any PCB's disposed of or stored at the facilities. If EPA includes any PCB monitoring or reporting requirements in the permits, the requirement to include a list describing all sources of PCBs on the premises previously removed, replaced, remediated, or reclassified should be removed as unnecessary and overly burdensome, as these materials have already been removed and cannot result in a discharge relevant to the permit. The same is true for the requirement to describe actions that have been established prior to the issuance of this permit to prevent and/or track releases of PCBs from potential PCB sources.

There is also no need to sample paint and caulking, especially since it is not a potential source of PCBs in relation to our outfalls. (USACE, p.4)

Response. Page 30-31 of the Fact Sheet describe the basis for the PCB Management Plan and Annual Report requirements. EPA received the results of two days of PCB sampling which does not provide enough data to determine whether discharges from the facility contain PCBs. The PCB Management Plan will provide facility-specific information to ensure that no PCBs are being discharged and that the permit condition prohibiting discharge of PCBs is implemented. If all PCBs have been removed, EPA expects that the plan will require minimal effort from the Corps. In addition, the Nez Perce Tribe supported the implementation of PCB monitoring requirements during discussions with EPA to protect the many fish and aquatic species downstream of Dworshak Dam. These species are important resources for the Tribe. The PCB monitoring and reports will be used when the permit is reissued to determine if it is necessary to

maintain the requirement in the next permit. No changes were made to the permit as a result of this comment.

Comment 23. Regarding the CWIS, the CWIS annual report requirement, and a status report of the Best Technology Available (BTA), Dworshak Dam does not see impinged fish in our strainers – therefore it does not seem pertinent that we investigate other technologies available. This would be an additional and costly project/expense if replacement of the CWIS is required. The Corps requests that evaluations only be authorized for fish impingement and not BTA for the intake structures. (USACE, p. 8)

Response. EPA did not receive sufficient evidence that there is no fish impingement at Dworshak Dam and, thus, requires further information to evaluate the risk to Snake River (SR) fall-run Chinook salmon for the next permit cycle. In the BiOp received from NMFS, NMFS describes the intake grates as potential sources of take to juvenile SR fall-run Chinook salmon and supports the need for further evaluation of the CWIS. The final permit does not require replacement of the CWIS. No changes were made to the permit as a result of this comment.

Comment 24. In Section VI.C, *EAL Plan and EAL Annual Reports*, the fact sheet sates; "The permit requires the use of EALs for all equipment with oil to water grease interfaces, unless technically infeasible." It is unclear if the intent is to implement Environmentally Acceptable Lubricants (EALs) for *oil to water grease interfaces* or *oil to water interfaces* as indicated in the permit. The Corps requests EPA clarify the conflicting statements. (USACE, p. 9)

Response. The permit requires the use of EALs for all equipment with oil to water interfaces. No changes were made to the permit as a result of this comment.

401 Certifications

Comment 25. In Permit Part I.B. Note 5, *Mercury and Methylmercury testing requirement of the 401 conditions,* please delete/remove the monitoring requirement for Mercury and Methylmercury Section B (Table 1). Table 1 states mercury monitoring is a "Requirement of the 401 Certification," however, the Permit does not include a "401 Certification Conditions" section. (401 Cert is referenced in two footnotes only – it is not appended or attached to the Permit). (USACE, p. 2)

Response. EPA included the draft 401 Certification as an addendum to the Fact Sheet. The final 401 Certification is issued with the final permit. The draft permit included footnotes to indicate which conditions were associated with the 401 Certification. The footnotes were removed for the final permit. No other changes were made to the permit as a result of this comment.

Comment 26. In Permit Part II.F.1, Notification of Exceedance of the TDG Standard, the permit states that the permittee must notify the Nez Perce Tribe Director of Water Resources in the case of planned operations that are expected to exceed 110% TDG downstream of Dworshak Dam. Current water quality standards allow us to exceed 110% instantaneously but force us under 110% TDG over a 12-hour period. The Corps requests clarification on the timing requirements for the notification. Specifically, the Corps requests the 110% over a 12-hour period as it helps the operators and water management make small adjustments to our spill operations when we are operating close to the state-imposed water quality limit. (USACE, p. 5)

Response. The intent of the condition is to require notification when current water quality standards are exceeded. Therefore, the notification is required when the Corps exceeds 110% TDG over a 12-hour period. EPA has revised the 401 certification condition and permit condition accordingly.

Comment 27. In Permit Part II.F.2, *Notification of Exceedance of the TDG Standard*, it is unclear what time frame "24" is and the Corps requests clarification. Assuming this means 24 hours, there are times when communications can be interrupted longer than 24 hours. The Corps would like to request that 24 hours be used as the standard time with the additional statement. "When communications cannot be restored within 24 hours, notifications will be made as soon as communications are restored." (USACE, p.5, 9)

Response. EPA agrees that the certification condition should specify notification within "24 hours," and has updated the certification accordingly. The intent of the condition is to provide notification as soon as possible. EPA has added the clarification that when communications are interrupted and cannot be restored within 24 hours, notification should be made as soon as communications are restored.

Comment 28. Since the mid-1990s, cold water is released from Dworshak Reservoir in the summer to manage water temperatures in the lower Snake River. The current NMFS Biological Opinion requires the Corps to maintain water temperatures at Lower Granite below 68 degrees, if possible, using available reservoir-system management methods. If EPA's permit conditions require a new dam operation, EPA cannot grant the permits with those conditions unless it independently satisfies the applicable requirements of the ESA, including those in Section 7(a)(2) and Section 9 of the ESA, 16 U.S.C. §§ 1536, 1538. The Corps has ensured that its current operations comply with the ESA. However, if EPA mandates that the Corps alter those operations, EPA must satisfy its ESA obligations before it grants their permits with the conditions requiring allegedly "necessary" changes to dam operations. (USACE, p. 5)

Response. The comment does not specify how the permit would interfere with the permittee's ability to comply with the permittee's current ESA obligations, and EPA is not aware of any permit conditions in the final permit that would interfere with the permittee's compliance with its ESA obligations. EPA completed Section 7 Consultation with NMFS and USFWS on the issuance of the permit. EPA received concurrence from USFWS and NMFS that the permit is not

likely to adversely affect all listed species except SR fall run Chinook salmon. EPA incorporated the two reasonable and prudent measures (RPMs) described by NMFS in the NPDES permit BiOp on SR fall run Chinook salmon – these RPMs are described in detail at the beginning of this document. No changes were made to the permit as a result of this comment.

Comment 29. In Fact Sheet Section VIII.A. *Mercury Monitoring*, The Nez Perce Tribal Code § 4-30-50(a)(4)(E) is incorrect. The Corps requests that it be changed to the appropriate citation Nez Perce Tribal Code § 4-3-50(a)(4)(E). (USACE, p. 9)

Response. The correct citation is Nez Perce Tribal Code § 4-3-50(a)(4)(E), as referenced in the draft permit. EPA does not revise fact sheets issued with draft permits after the public comment period. EPA revised the citation in the final 401 certification. No changes were made to the permit as a result of this comment.

Comment 30. Identifying the basis of the mercury monitoring requirement is unclear in both the Fact Sheet and draft Permit. The Fact Sheet states this requirement is associated with NPT Code § 4-30-50(a)(4)(E), however, the Code is not mentioned in the Permit. First, Section II.C of the Fact Sheet states the draft permit proposes mercury monitoring. Second, the draft Permit, and Section I.B.11 of the Permit includes the mercury monitoring requirement -- not just the 401 Certification.

Response. The mercury monitoring requirement is a condition of the 401 certification. Clean Water Act section 401(d) allows the certifying authority to include additional conditions necessary to ensure that the permit meets the enumerated sections of the Clean Water Act as well as relevant State/Tribal law. The basis for the condition in the 401 certification is Nez Perce Tribal Code § 4-3-50(a)(4)(E). The basis for the condition is explained in the Fact Sheet on p. 35. Pursuant to CWA section 401(d), EPA included the certification condition as a condition of the permit. Although EPA usually does not incorporate certification conditions until final permit issuance, in this case, since EPA is both the permitting authority and certifying authority, EPA incorporated the draft certification condition in the draft permit and accepted comment on it during the public comment period. No changes were made to the permit as a result of this comment.

Comment 31. There is no information indicating facility outfalls include mercury and less evidence the Corps is a contributor of such pollutant. The Corps should not be viewed as responsible for monitoring a potential outfall pollutant that is based on, at best, suspicion.

The justification to include mercury monitoring (if any) is based on speculation or conjecture. The North Fork Clearwater River is not impaired for mercury and methylmercury. There are no supporting fish tissue samples and there is no evidence or indication of mercury in the Dworshak Dam outfalls. The Fact Sheet simply states MeHg "may be discharged through dam outfalls into downstream waters," which is a general statement that could be made about almost any outfall. EPA provides no supporting data to support mercury monitoring, except suspicion (at best) and reference to NPT Code § 4-30-50(a)(4)(E) in the Fact Sheet. EPA further states in the Fact Sheet "there is a lack of information regarding Hg and MeHg in the discharge from the outfalls at Dworshak Dam," yet then inappropriately incorporates the mercury monitoring requirement, without supporting evidence, to ensure that tribal treaty rights are protected and NPT Code § 4-30-50(a)(4)(E) is not violated.

Section II.C of the Fact Sheet should not state the Permit will include mercury monitoring of outfalls, or reference to the Nez Perce Tribal Code, as there is a complete lack of evidence of the Facility being a contributor to mercury pollution or any mercury in the proposed permitted point source outfalls.

This is especially so given the unlikely presence of MeHg in such outfalls. Such monitoring equipment is costly, and the condition is unnecessary and lacks any supporting rationale. The Corps should not be viewed as responsible for a potential outfall pollutant that is based on (at best) suspicion, especially when there is a total lack of evidence the Corps is a point source contributor of such pollutant.

The lack of information concerning mercury is not the Corps responsibility or fault and should not be included as a condition of this permit. The Fact Sheet states that atmospheric deposition is the primary source of mercury to aquatic ecosystems. The Corps feels that testing for mercury (Hg) and (MeHg) methylmercury unnecessary, as the Dworshak Dam does not add mercury to the system. Any mercury, including mercury that has been converted to methylmercury, that can be found in Dworshak discharges originate upstream of the dam via direct air deposition to surface water, surface runoff of sediment with attached mercury from air deposition, and ground water flow that enters surface water bodies. The Corps does not manage land upstream of Dworshak Dam and its hydropower operations decrease the region's reliance on fossil fuels including coal, a significant source of air-deposited mercury. The fact sheet also states there is a lack of information regarding Hg and MeHg in the discharge from the outfalls at Dworshak Dam.

The 401 certification is not an appropriate vehicle for obtaining information that is not related to Clean Water Act implementation. The CWA Section 401 Certification Rule, 85 FR 42210 (July 13, 2020; 2020 Rule), which is currently in effect, does not include "activity as a whole" regulatory scope that could have been a basis for including mercury and methylmercury monitoring due to the dam's impoundment effects. As EPA's Fact Sheet describes, there is no 303(d) impaired waters listing for mercury or methylmercury. EPA's Fact Sheet points to Nez Perce Tribal Code § 4-3-50(a)(4)(E), which is incorrectly referenced in the Fact Sheet as § 4-30-50(a)(4)(E), to support inclusion of the mercury and methylmercury monitoring requirement. EPA's vague reference is not an adequate regulatory basis for requiring this monitoring in the 401 certification and the permit by referencing the 401 certification. Additionally, EPA provides

no data in its Fact Sheet to support the need for monitoring mercury and methylmercury in Dworshak Dam's discharges.

Monitoring mercury and methylmercury for the sake of informational purposes where there is no regulatory requirement is burdensome and an unnecessary expense, especially considering the resource-intensive nature of obtaining methylmercury samples that require great care and special procedures to prevent sample contamination because of the incredibly low 0.06 nanogram per liter of methylmercury that the draft permit specifies as the highest Minimum Level (ML) concentration for laboratory analysis of aqueous methylmercury. (BPA, p. 2-3, PPC p. 1-2)

Response. Reservoir conditions influence the surrounding environment in several ways that may promote the conversion of deposited Hg into MeHg. Examples of the biogeochemical conditions that reservoirs create that influence Hg cycling include: 1) reduced water flow rates may facilitate deposition and accumulation of Hg and organic matter from the water-column to the sediment where conditions are often suitable for MeHg production; 2) thermal stratification of the water column can result in anoxic conditions developing within the hypolimnion which creates favorable conditions for the bacteria involved in Hg methylation; 3) water-level fluctuations that seasonally expose and flood sections of the shoreline can enhance the activity of sediment bacteria communities involved in Hg methylation; and 4) a shift from a lotic to lentic food web can enhance MeHg biomagnification. These conditions exist at Dworshak and may result in the discharge of Hg and MeHg through the outfalls, which has the potential to impact Nez Perce tribal treaty fishing rights within the Clearwater River.

Due to the potential for Hg and MeHg discharge from the outfalls, and EPA's lack of sufficient evidence that the outfalls do not discharge Hg and MeHg, EPA is requiring the permittee to conduct mercury monitoring. The approved sampling methods for measuring mercury and methylmercury in water column are Method 1631E and Method 1630, respectively. The established MDL for Method 1630 is 0.06 ng/L. The resulting data will be used during the next permit cycle to further assess the prevalence of Hg and MeHg in the discharge.

Under the 2020 401 Certification Rule, the scope of the 401 certification is "limited to assuring that a discharge … will comply with water quality requirements." 40 CFR 121.3. The term "discharge" is defined as "a discharge from a point source…." 40 CFR 121.1(f). Here, EPA is including a monitoring condition related to the discharge from the outfalls (i.e., the point source). EPA is not requiring monitoring within the reservoir itself. Therefore, the condition is within the scope of CWA section 401.

As explained in the Fact Sheet, Nez Perce Tribal Code § 4-3-50(a)(4)(E) states that "[a] person commits a water infraction if he …. Operates a point source … in a manner which interferes with any right of the Nez Perce Tribe…." The Tribe has raised concerns regarding the discharge of mercury from the outfalls that could interfere with the Tribe's treaty fishing rights at usual and accustomed places within the Clearwater River downstream of the discharge. Therefore, to

ensure that the Tribe's treaty rights are not interfered with in violation of the Tribal Code, EPA has included mercury monitoring as a condition of the 401 certification. See Fact Sheet at p. 35.

No changes were made to the 401 certification as a result of this comment.

Comment 32. Section I.C of the Fact Sheet states, "The Nez Perce Tribe does not have Treatment as a State (TAS), therefore EPA is the permitting and certifying authority. . . .EPA coordinated with the Nez Perce Tribe during development of the draft permit and CWA 401 certification." Such coordination does not provide EPA with Authority to enforce the NPT Code in this Permit. There is no analysis regarding the applicability of Nez Perce Code § 4-30-50(a)(4)(E). (USACE, p. 8)

Response. Since the Nez Perce Tribe does not have TAS, EPA is the certifying authority and must comply with the requirements of CWA section 401 when issuing a certification, including CWA section 401(d). See 40 CFR 121.13(a). CWA Section 401(d) requires the state where the discharge occurs to certify that the permit meets the enumerated provisions of the CWA and "other appropriate requirements of State [or tribal] law." 33 USC § 1341(d). See response to comment 32 for a discussion regarding the applicability of Nez Perce Code § 4-3-50(a)(4)(E). No changes were made to the permit as a result of this comment.

Comment 33. The 401 Certification Condition 1 on Mercury and Methylmercury Monitoring should be removed/deleted. As stated in the Certification, "The Nez Perce Tribe does not have TAS for this facility discharging into the North Fork Clearwater River. Therefore, EPA is responsible for issuing the CWA Section 401 Certification for this permit." The attempt by EPA to enforce the Nez Perce Code (§ 4-30-50(a)(4)(E)) in the Certification is inappropriate, without authority and not a legal requirement. (USACE, p.10)

Response. See response to comments 32 and 33. No changes were made to the permit as a result of this comment.

Comment 34. The intakes for the Main Unit Turbines are at elevation 1420 feet. Elevation to the bottom of the lake is at 990 feet. It is worth noting that the 430-foot difference between the bottom of the lake and the main unit intakes is 430 feet. Mercury is a heavy element, and it is very unlikely that elemental mercury would be discharged from any of our Main Units leading to the tailrace of the facility. (USACE, p. 9-10)

Response. The majority of Hg found in waterbodies is in an oxidized form (Hg^{2+}). In this form, mercury is present in water in either a dissolved inorganic form, often associated with dissolved organic matter, or bound to particles. When Hg is bound to dissolved organic carbon, it is possible for it to stay in suspension in the water column. Some inorganic Hg bound to particles may settle to the sediment, however, depending on the flow rate of the water and mass of the associated particle, a portion may stay in suspension throughout the water column. Any elemental Hg within the reservoir is more likely to volatize from the water column due to low

solubility instead of sinking within the water column. Hg has been documented in surface water and deeper in the water column within reservoirs.

Therefore, although the intake for Dworshak Dam is located 430 feet above the bottom of the lake, it is still possible that the intake would capture and discharge mercury. No changes were made to the 401 certification as a result of this comment.

Comment 35. PPC urges rejection of any NPDES conditions that would interfere with Dworshak water releases. As part of the integrated Federal Columbia River Power System, Dworshak operations facilitate efficient hydroelectric generation that substantially reduces the need for coal generation, which in turn reduces the potential for future air deposition of mercury. (PPC, p. 2)

Response. EPA acknowledges that Dworshak operations contribute to hydroelectric generation. EPA has coordinated with the Corps in the development of this permit and has not included any conditions in the 401 certification that would interfere with Dworshak water releases. No changes were made to the permit as a result of this comment.

Comment 36. The Corps' operation of Dworshak Dam is an essential part of water temperature management in the Clearwater and lower Snake rivers. Summer-time cold water releases have the greatest cooling effect on Lower Granite Dam, the nearest dam downstream from Dworshak Dam, and the effect of cold water releases is diminished at each subsequent downstream dam on the Snake River. Cold water releases from Dworshak Dam were included in EPA's current conditions evaluation for their Columbia and Lower Snake Rivers Temperature Total Maximum Daily Load (TMDL). For the TMDL, EPA's review of observed temperature between 2011 and 2016 shows an annual average temperature exceedance of 0.3ºC of Washington's 20ºC (68.0ºF) water quality temperature criterion for five days per year at Lower Granite Dam's tailrace. The 2020 National Marine Fisheries Service Columbia River System Biological Opinion (Biological Opinion) requires targeting water temperatures at Lower Granite Dam below 18ºC (64.4ºF) during June and most of July. The Corps' Dworshak operations improves temperature conditions for migrating endangered salmonids. It is critical that the NPDES permit and associated 401 certification do not require implementation actions that could compromise the Corps' ability to conduct cold water releases from Dworshak Dam in accordance with the Biological Opinion. (BPA, p. 2; PPC, p.1-2)

Response. EPA agrees that the cold water releases at Dworshak Dam improve temperature conditions downstream. The permit and 401 certification do not require any changes in the summer-time cold water releases at Dworshak Dam. EPA consulted with USFWS and NMFS on the impacts of the permit on threatened and endangered species. EPA received concurrence from USFWS that the permit is NLAA Bull Trout, and from NMFS that the permit is NLAA Chinook salmon and its designated critical habitat, SR spring/summer Chinook salmon, and SRB steelhead. NMFS issued a Biological Opinion for the permit on the impact on SR fall Chinook salmon and its critical habitat, determining the permit conditions are not likely to result in

jeopardy to SR fall Chinook salmon or destruction or adverse modification of its critical habitat. No changes were made to the permit as a result of this comment.

Comment 37. The Corps should not be responsible for monitoring contaminants that are not caused by the operation and maintenance of Dworshak Dam. The requirement for bi-annual mercury monitoring goes beyond the responsibility of the Corps, and estimated costs for such 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 and taxpayers. (BPA, p. 4)

Response. EPA recognizes that mercury effluent monitoring at the facility will be costly. EPA limited the required mercury and methylmercury monitoring in the permit to bi-annual monitoring at each outfall, which will yield a reasonable amount of data (10 samples at each outfall) to assess the effluent for mercury. To begin monitoring after the effective date of the permit, EPA removed the timing requirements for mercury sampling, from 'sampling must occur twice a year in March and August, beginning in March 2024' to 'sampling must occur twice a year in March and August.' EPA made this change in the 401 Certification and Permit Part I.B.11. Mercury monitoring is required in March and August while the permit is effective.