



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT
4735 EAST MARGINAL WAY SOUTH, BLDG. 1202
SEATTLE, WASHINGTON 98134-2388

February 15, 2022

SUBJECT: Corps Comments on Washington State Department of Ecology's Public Notice Requesting Comments on EPA's Request for Section 401 Certification for Draft NPDES Permits for the Grand Coulee Dam and Chief Joseph Dam

Angela Zeigenfuse
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Ms. Zeigenfuse,

On behalf of the U.S. Army Corps of Engineers (Corps), Seattle District, I am submitting the following comments on the Washington State Department of Ecology's (Ecology) January 26, 2022 Public Notice seeking input on what water quality conditions Ecology should consider to ensure that the United States Environmental Protection Agency's (EPA) draft National Pollutant Discharge Elimination System (NPDES) permit for the Chief Joseph Dam complies with applicable sections of the Clean Water Act (CWA).

The Corps, as the applicant for the NPDES permit for the Chief Joseph Dam (for which EPA has requested water quality certification pursuant to Section 401 of the CWA), requests the opportunity to meet with Ecology and discuss the terms and conditions of the draft Section 401 Certification prior to Ecology finalizing the Certification. This would allow the Corps and Ecology the opportunity to share information, discuss relevant definitions and standards, and help ensure that the final Certification is implementable. The Corps understands that it is Ecology's usual course of business to collaborate with permittees and is aware of specific instances in which Ecology has afforded other applicants an opportunity to review draft certifications in the past (e.g., Public Utility District No. 1 of Chelan County for the Lake Chelan Hydroelectric Project). The Corps therefore requests the same opportunity to work collaboratively with Ecology on the conditions that it is considering including in the Section 401 Certification. If Ecology is unable to work with the Corps prior to finalizing the Certification, the Corps requests an opportunity to review and comment on the draft Certification before it is finalized.

In advance of further collaboration, the Corps submits the following general comments for Ecology's consideration:

a. EPA's draft NPDES permit has established effluent limitations, standards, and other requirements to ensure the Corps will not violate Washington's water quality standards. The Corps plans to meet implementation guidelines as set out by EPA. Even if Ecology does not waive certification in accordance with 40 CFR § 121.16(a), in light of long-term and ongoing existence and operation of the Chief Joseph Dam and the minimal effects to water quality from discharges identified in the draft NPDES permits, the Corps does not believe that substantial additional conditions are necessary.

b. Any conditions should be focused on ensuring that the point source discharges to be authorized by the permit for which 401 certification is requested do not violate state water quality standards, as opposed to the existence and operation of the facility as a whole. The contents of a certification may include "[a] statement of any conditions which the certifying agency deems necessary or desirable with respect to the discharge of the activity[.]" 40 CFR § 121.2(a)(4). Similarly, Ecology's January 26, 2022 *Public Notice* acknowledged that "[t]he state certification evaluates whether the *discharge* will comply with the applicable provisions of sections 301, 302, 306, and 307 of the [CWA] and appropriate requirements of state law" (emphasis added). Focus on the point source discharges would help to ensure that the conditions of the Certification are implementable.

c. Chief Joseph Dam was authorized by Congress in 1946 for the generation of hydroelectric power and other purposes. Unlike other non-federal dams, it does not require additional licensing, permits, or authorizations for its continued existence; indeed, federal law requires the continued operation of Chief Joseph Dam for its authorized purposes. The federal permitting action here for which 401 certification is requested will authorize discharges of pollutants from discrete point sources. Accordingly, the scope of what a NPDES permit authorizes is narrower than what a license from the Federal Energy Regulatory Commission would authorize. Any conditions included in the Certification should recognize this.

d. Conditions should not seek to require the Corps to address exceedances of water quality or temperature standards that occur solely due to the existence of the Chief Joseph Dam. *Nat'l Wildlife Fed. v. U.S. Army Corps of Eng'rs*, 384 F.3d 1163, 1178 (9th Cir. 2004). Nor should conditions require the Corps to address pollution from sources beyond the Corps' control (e.g., nonpoint sources and point sources upstream of Chief Joseph Dam).

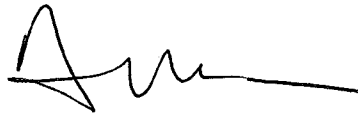
e. Any conditions should be imposed in accordance with 40 CFR Part 124, "Specific Procedures Applicable to NPDES Permits." Accordingly, if Ecology wishes to impose conditions more stringent than those found in the draft NPDES permit, conditions should be *necessary* to assure compliance with applicable CWA provisions and state law and must cite the CWA or state law references upon which the condition is based. See 40 CFR § 124.53. Additionally, conditions should also comply with the modification procedures as described in 40 CFR § 124.55.

f. The draft NPDES permit does not identify Total Dissolved Gas (TDG) as a pollutant of concern for the discharges authorized by this permit. Accordingly, Ecology should refrain from imposing conditions regulating TDG in its Certification. Moreover, due to the required operation of the Chief Joseph Dam, the Corps may not be able to strictly comply with the TDG criteria in WAC 173-201A-200(1)(f). Chapter 3, § 3.4.2.1, *Columbia River System Operations Environmental Impact Statement* (July 2020).

g. Ecology should ensure that any conditions will not impair the Corps' ability to effectively operate and maintain the Chief Joseph Dam for its Congressionally-authorized purposes, nor interfere with the Corps' compliance with other laws.

The Corps appreciates the opportunity to submit these comments for consideration in the Section 401 Certification. We look forward to continuing to work closely with Ecology on the Section 401 Certification for the Chief Joseph Dam. If you have any questions regarding the comments above, please contact Mr. Arthur Leskowich, Environmental Compliance Coordinator, at (503) 924-9772 or arthur.f.leskowich@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amy R. Reese', with a long horizontal line extending to the right.

Amy R. Reese, PE
Chief, Operations Division