



Water Quality, Water Resources, and Shorelands & Environmental Assistance Programs Joint Policy

Chapter 1

WQP Policy 1-28
WRP Policy 1255

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Revised:

References: RCW 90.48.260, 90.22,
90.54.020, 90.56

Roles and Responsibilities for Federal Energy Regulatory Commission (FERC) Hydropower Projects

Purpose:	Provide agreed-upon policy, protocols, and procedures between Ecology program staff that take part in the 401 certification process for FERC hydropower projects.
Application:	Review and approval of hydropower project 401 certification applications and implementation of 401 certifications to ensure that project will comply with applicable provisions of the state and federal law.

1. Background

Applicants for a federal license or permit that may result in a discharge to navigable waters must submit to the federal permitting agency a certification from the state that the discharge will comply with state water quality standards and other applicable requirements of state law [Section 401 of the federal Clean Water Act (CWA)]. The Legislature has designated the Department of Ecology (Ecology) to issue this certification (RCW 90.48.260).

Examples of applicable state laws include:

- State Water Pollution Control Act – Chapter 90.48 RCW
- State Water Quality Standards – Chapter 172-201A WAC
- Minimum Flows and Levels Act – Chapter 90.22 RCW
- Water Resources Act – Chapter 90.54.020 RCW
- Discharge of Oil – Chapter 90.56 RCW

Hydropower projects seeking a license from FERC must obtain a Section 401 Water Quality Certification (401 Certification) from the state before FERC can issue a licensing decision. In addition to the CWA requirements, other state laws and authorizations may also pertain to FERC hydropower projects and must be complied with:

- Washington Water Code – Chapter 90.03 RCW
- Washington Coastal Zone Management (CZM) Program
- State Environmental Policy Act (SEPA)
- Shoreline Management Act (SMA)

In 2007, the state Legislature amended RCW 90.16.050 to increase the annual fees for a hydropower license (Chapter 286 of the laws of 2007). The legislation provided authorization to the Washington Department of Fish & Wildlife (WDFW) and Ecology to spend these funds to provide reasonable and necessary oversight of FERC-issued hydroelectric project licenses. In addition, the statute now requires a biennial report that the Legislature will use to consider extending this fee structure when it sunsets in 2017.

Water power license fees provide funding for:

- Water Quality Program taking part in the FERC relicensing process, negotiating and implementing the 401 Certification conditions (2.0 FTE);
- Water Resources Program producing and assessing in-stream flow studies, determining in-stream flow requirements for 401 Certifications, and implementation (0.5 FTE).
- WDFW assisting in developing and implementing 401 Certifications by providing technical fish and aquatic habitat expertise, including instream flow modeling and evaluation (2.3 FTE).

2. Ecology Program Responsibilities with FERC

The Water Quality (WQ), Shorelands and Environmental Assistance (SEA), and Water Resources (WR) programs have responsibilities related to FERC hydropower 401 Certifications for constructing, re-licensing, and decommissioning hydropower facilities.

FERC processes (preliminary reviews, pilot projects, licensing, exemptions, amendments to licenses, and relicensing) are coordinated at Ecology's regional level, with program staff at headquarters providing technical assistance and support as needed. The regional FERC hydropower project team includes the principal decision maker who will sign the 401 Certification, the contact person, and specialists from the various programs.

Once the applicant has filed for a preliminary permit with FERC, designated regional program staff will ensure that all the other programs receive notification of the filing.

Specific responsibilities of each program are described in the sections below.

Water Quality (WQ) Program

- The WQ Program is responsible for issuing 401 Certifications for FERC hydropower projects involving dams,¹ including decommissioning, to ensure that water quality standards will be met. This includes developing and issuing the 401 Certification and any amendments, and coordinating with other relevant program staff.
- The WQ Program manages and regulates activities that may impact water quality to ensure that the water body's "designated uses" are met, such as aquatic life uses, primary and secondary contact recreation, water supply, aesthetics, and navigation.
- The WQ Program is responsible for oversight and coordination efforts on FERC projects to ensure that the hydropower fees are being spent in accordance with the 2007 legislation. This includes:
 - Overseeing the contract with WDFW to conduct FERC work paid for through the hydropower fees.
 - Coordinating with WR and WDFW on the biennial report to the Legislature on Water Power License Fees.
 - Performing other coordination duties required for information sharing, improving coordination between agency staff and industry, and resolving conflicts.

Shorelands and Environmental Assistance (SEA) Program

- SEA Program staff have lead responsibility for issuing 401 Certifications for all FERC hydropower energy projects that are not dams.² This includes developing and issuing the 401 Certification and any amendments, and coordinating with the other relevant program staff.
- The SEA Program is responsible for CZM Federal Consistency decisions if needed for all types of FERC hydropower projects.
- SEA Program staff will provide any needed technical assistance regarding SEPA, SMA, and wetlands issues.

Water Resources (WR) Program

- The WR Program evaluates and establishes instream flows as part of the 401 Certification and settlement agreement development and implementation.

¹ These projects are typically defined as major hydropower dams impounding over 10 acre feet of water or that generate greater than fifty horsepower (hp).

² Examples of projects not considered a dam include tidal power and fresh water micro-hydrokinetic applications. These involve slower-moving turbines or other devices placed in tidal currents and in rivers, below dams, and in irrigation canals.

- The WR Program issues water right permits for use of surface waters to store and use such waters for power production (Washington Water Code 90.03 RCW).
- The WR Program collects and tracks hydropower license fees.

3. Initial Contact for new Hydropower Projects

Prior to the preliminary permit stage for FERC hydropower projects, interested applicants will be directed to the Office of Regulatory Assistance Information Center (ORA IC) to determine what permits and/or authorizations the applicant would need for its project. ORA IC staff will direct the applicant to the appropriate program staff for further assistance based on project-specific needs.

4. Protocols for Ecology Program Involvement in FERC Hydropower Projects

The issuance of a 401 Certification for a FERC hydropower project should include all aspects of the project scope, not just for operation of the dam. For example, anticipated needs for future in-water work requiring a CWA 404 permit from the Corps of Engineers should be built into the 401 Certification issued for the FERC License. This eliminates the need to amend the 401 Certification later.

Below are established roles of the three Ecology programs for processing 401 Certification applications for FERC hydropower projects. Program Managers may make exceptions to these assigned responsibilities for more complex projects.

- The WQ regional section manager signs and issues the 401 Certification and assigns a regional WQ staff person to be the 401 Coordinator for hydropower projects with dams.
- The SEA regional section manager signs and issues 401 Certifications and assigns a regional SEA staff person to be the 401 Coordinator for hydropower projects that are not dams.
- The project 401 Coordinator is the lead point of contact for issues having to do with the 401 Certification. Other Ecology staff working on technical project issues should include the project 401 Coordinator in any communications with the applicant.
- The project 401 Coordinator consults within the agency and with other state agencies to ensure compliance with the water quality standards and other water quality-related laws.
- Staff members in the Watershed Management Section of the WQ Program provide technical assistance and support to the regional project 401 Coordinator on water quality standards issues.
- Regional SEA staff members provide technical expertise and support on any issues involving CZM decisions, SEPA decisions, SMA, and wetlands issues.

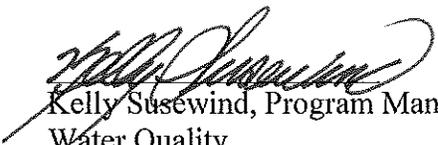
- Regional WR staff members provide technical expertise and support on water rights issues in relation to the 401 Certification.
- Headquarters WR staff evaluate and define minimum instream flows. This includes water right applications after consulting with WDFW, tribes, and others as necessary; and negotiations to establish instream flows for FERC processes including licensing, exemptions to licenses, and oversight of operating conditions.
- The project 401 coordinator drafts the 401 Certification and works with other staff to determine conditions in the 401 Certification.

5. Conflict Resolution

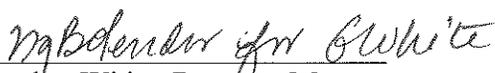
The project 401 coordinator is responsible for resolving conflicting issues at the staff level that will lead to conditions in the 401 Certification. If agreement cannot be reached, the following conflict resolution process will be employed to resolve any conflicts:

- Issues between programs that cannot be resolved at the staff level will be elevated to the appropriate regional section managers.
- Issues that cannot be resolved at the section level will be elevated to the Regional Management Team (RMT), including the Regional Director as appropriate. The RMT will work with appropriate regional and headquarters staff to fully understand the conflicting issue, and options to reach resolution.
- Program staff should clearly state any questions regarding legal authority to RMT so that, if needed, the attorney general's office can provide advice to resolve issues.
- If conflicts cannot be resolved at the regional level, then the relevant program managers will decide on a path forward.
- Ultimately, the Deputy Director will make the final decision where programs cannot agree on a final resolution.

6. Program Management Approval


 Kelly Sussewind, Program Manager
 Water Quality


 Ken Slattery, Program Manager
 Water Resources


 Gordon White, Program Manager
 Shorelands and Environmental Assistance

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