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DEPARTMENT OF ECOLOGY
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February 28, 2019

Daniel Opalski, Director
Office of Water and Watersheds
United States Environmental Protection Agency - Region 10
1200 Sixth Avenue, Suite 155, OWW
Seattle, WA 98101

RE: Clean Water Act Section 401 Certification for
Nine Federal Dams on the Columbia and Snake Rivers

Dear Director Opalski:

Thank you for your letter on February 15, 2019 clarifying that the U.S. Environmental Protection Agency (EPA) intends to reapply to the Washington State Department of Ecology (Ecology) for Clean Water Act (CWA) Section 401 certifications for the nine federal dams on the Columbia and Snake rivers. Your letter states that EPA will submit a new request for certification after completing further internal review.

We appreciate the clarification that EPA does intend to request Section 401 certifications, as your withdrawal was unexpected. We have been engaged in this process since receiving the first draft National Pollutant Discharge Elimination System (NPDES) permits for the nine federal dams from EPA on September 19, 2018. On October 19, 2018, EPA requested that Ecology provide Section 401 certifications for the dams by December 18, 2018. On December 7, 2018, Ecology requested a 45-day extension from EPA that you granted, extending the certification deadline to February 1, 2019.

On January 25, 2019, during the partial federal government shutdown, Ecology requested a second extension to allow time to complete our required public notice and comment period. On January 29, 2019, after EPA staff returned to work, Ecology received your written approval of an extension. This extended the certification deadline to February 28, 2019.

Ecology initiated a public notice and comment process on January 30, 2019. On February 1, 2019, EPA notified Ecology that EPA was no longer seeking Section 401 certification for the dams. As your notification came during our public process, our comment period remained open. The comment period ended on February 19, 2019. The comments we received are available here: http://ws.ecology.commentinput.com/?id=ix2pY.

The majority of comments focus on the importance of ensuring all discharges from the dams meet state surface water quality standards. In particular, temperature was raised as a key concern to address, due to the importance of temperature in protecting and rebuilding salmon populations in the Columbia Basin and in achieving our state's recovery goals for salmon and Southern Resident orca recovery.

By your February 1, 2019 letter to me, Ecology considers your request for certification to have been officially withdrawn. Your February 15, 2019 letter indicates that EPA will request Section 401 certification after EPA completes internal review and updates the preliminary draft permits. At that point, EPA will need to submit a new request for Section 401 certification, which will start a new review period for Ecology under Section 401 of the CWA.

We interpret from your verbal communications with us that completing this work is a priority for EPA. We would value hearing from EPA the timeframe for a new request. Ecology will be ready to evaluate the application and the draft NPDES permits, and be prepared to issue or deny the certification at that time. Be advised that state law requires us to complete a new public review and comment process on the new request.

This letter **shall not** be considered a waiver of Washington State's Section 401 certification authority. In the event that EPA decides to move forward with any of the permits referenced in your October 19, 2018 letter without submitting a new request for certification to Ecology, this letter is a denial of the Section 401 certifications you requested.

If you have any questions or would like to discuss these matters further, please contact Eleanor Ott, PE at (360) 407-6433 or eleanor.ott@ecy.wa.gov.

Sincerely,

Heather R. Bartlett
Department of Ecology
Water Quality Program Manager

Enclosure

cc: Jennifer Wu, Permit Writer, Region 10 EPA
Susan Poulsom, NPDES Permits Lead, Region 10 EPA
Loree' Randall, Department of Ecology, SEA Program
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