

**THE STATE OF MONTANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF** the application of **AVISTA CORPORATION** (formerly Washington Water Power Co.) for certification under Clean Water Act §401 of Avista's hydroelectric projects on the Clark Fork River.

**CERTIFICATION UNDER CLEAN  
WATER ACT §401.**

**PLEASE TAKE NOTICE:**

Avista Corporation (formerly Washington Water Power Company), 1411 East Mission, P.O. Box 3727, Spokane, Washington 99220-3727 (hereinafter referred to as Avista) owns and operates the Noxon Rapids and Cabinet Gorge hydroelectric facilities on the Clark Fork River in northwestern Montana. Avista has applied to the Federal Energy Regulatory Commission (FERC) for the re-licensing of these hydroelectric facilities under the Federal Power Act, (16 USC §791a *et seq.*). FERC has given these projects the numbers 2058 and 2075.

Section 401(a) of the federal Clean Water Act (The Federal Water Pollution Control Act, 33 USC §1341) requires that any applicant for a federal license or permit to conduct an activity which may discharge into navigable waters must provide the licensing or permitting agency with a certification from the state in which the discharge originates. The certification must state that any such discharge complies with certain sections of the Clean Water Act and corresponding state water quality laws including state water quality standards. Section 401(d) further provides that the certification must set forth any limitations or conditions necessary to assure that the applicant complies with any applicable effluent limitations, other limitations, monitoring requirements and other appropriate requirements of state law related to water quality.

The Department of Environmental Quality is an executive branch agency of the State of Montana charged with the administration and enforcement of the state's statutes and administrative rules pertaining to water quality. These statutes and rules are found at Title 75, Chapter 5, Montana Code Annotated (MCA), and Title 17, Chapter 30, Administrative Rules of Montana (ARM), respectively. ARM 17.30.101 through 109 pertain to certification under §401 of the federal Clean Water Act.

The waters of the Clark Fork River at the site of these hydroelectric facilities are classified pursuant to 75-5-301, MCA, as class B-1. Waters classified B-1 must be maintained suitable for drinking, culinary and food processing purposes, after conventional treatment; bathing, swimming, and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply. ARM 17.30.623.

On January 11, 1999, Avista submitted its application to this Department for §401 certification of its hydroelectric projects numbered 2058 and 2075 (hereinafter referred to as "the Application"). The Department has determined the Application to be complete.

The Department has examined the complete Application, studies submitted in support of the Application and all other available pertinent information. The Department has also participated in extensive multi-party discussions of issues pertaining to the proposed issuance of a new license for these hydroelectric facilities and has entered into an agreement with Avista and other interested parties that resolves most of these issues to the mutual satisfaction of the parties. This agreement is called the “Clark Fork Settlement Agreement” and is dated January 1, 1999 (hereinafter referred to as the “Settlement Agreement”). The Settlement Agreement consists of numerous specific measures contained in its appendices designed to protect, maintain and enhance various natural resources and environmental values affected by the hydroelectric facilities including water quality and the beneficial uses of the waters of the Clark Fork River. The Department has examined this information and finds it sufficient for the Department to reach its decision.

Based upon this examination, the Department has determined that there is reasonable assurance that the re-licensing and continued operation of these hydroelectric facilities in accordance with the conditions listed below would not result in a violation of water quality standards, any applicable effluent limits, other limitations, monitoring requirements or other appropriate requirements of state law related to water quality.

The following conditions are hereby included in this certification:

- (1) The Department’s certification is conditioned upon compliance by Avista with all of the terms and conditions of the Settlement Agreement relating to water quality and to the protection, maintenance or enhancement of the designated beneficial uses of the waters of the Clark Fork River including, but not limited to, the following:

Appendix B:	Montana Tributary Habitat Acquisition and Recreational Fishery Enhancement Program
Appendix C:	Fish Passage/Native Salmonid Restoration Plan
Appendix E:	Watershed Council Program
Appendix F1:	Support of Tri-State Implementation Council Water Quality Monitoring Program
Appendix F2:	Mobilization of Sediment Trapped Nutrients or Heavy Metals
Appendix F3	Aquatic Organism Tissue Analysis
Appendix F4	Water Quality Protection and Monitoring Plan for Maintenance, Construction, and Emergency Activities
Appendix F5:	Gas Supersaturation Control, Mitigation, and Monitoring
Appendix G:	Implementation of Land Use Management Plan
Appendix H:	Implementation of Recreation Resource Management Plan
Appendix J:	Implementation of the Wildlife, Botanical, and Wetland Management Plan
Appendix M-1:	Wetlands Protection and Enhancement Program
Appendix T:	Project Operation Package

The Clark Fork Settlement Agreement is hereby incorporated into this certification by reference.

- (2) In addition to the monitoring requirements contained in the terms and conditions of the Settlement Agreement, Avista shall notify the Department in writing not less than two (2) weeks prior to commencing any construction activity under authority of this certificate which may result in a discharge of pollutants to state waters. Avista shall notify the Department within seven (7) days after the completion of any construction activity resulting in a discharge of pollutants. Avista shall allow the Department reasonable entry and access to the discharge site in order to inspect the discharge for compliance with the conditions of this certification.
- (3) Avista shall obtain all permits, authorizations and certifications required by federal, state, or local laws, regulations or ordinances prior to the commencement of any activity that could violate Montana's water quality standards.
- (4) This approval is limited to and includes the proposal and plans contained in the application and supporting documents submitted and affirmed to by Avista. Any variances from the plans and proposals contained in the application and supporting documents are subject to the review and approval by the Department prior to implementation.
- (5) Should the project be found, at any time, not to be in compliance with any of the conditions of this certification, or should the permittee construct or operate this project in any way other than as specified in the application or supporting documents, as modified by the conditions of this certification, then the terms of this certification shall be considered to have been violated.
- (6) This certification shall expire upon the assignment or transfer of the property covered by this certification unless the new owner submits to the Department a written consent to all the terms and conditions of this certification.

THEREFORE, the Department hereby certifies, subject to the foregoing conditions, that the re-licensing and continued operation of these hydroelectric projects, with the conditions imposed, will not result in a discharge that violates any effluent limitation of water quality standard stated in or developed pursuant to ARM Title 17, Chapter 30.

DATED this \_\_\_\_\_ day of April 1999.

STATE OF MONTANA,  
DEPARTMENT OF ENVIRONMENTAL QUALITY

By: \_\_\_\_\_  
Mark A. Simonich, Director