



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway • Coeur d'Alene, Idaho 83814 • (208) 769-1422

C.L. "Butch" Otter, Governor  
Toni Hardesty, Director

June 5, 2008

Mr. Bruce Howard  
Director of Environmental Affairs  
Avista Utilities  
1411 East Mission  
PO Box 3727  
Spokane, Washington 99220-3727

**Re: 401 Certification for Avista Corporation's Post Falls Hydroelectric Development, FERC Project No. 12606, Kootenai and Benewah Counties, Idaho**

Dear Mr. Howard:

The Idaho Department of Environmental Quality ("IDEQ") has completed its review of the application for water quality certification for a new Federal Energy Regulatory Commission ("FERC") license ("New License") for Avista Corporation's ("Avista") Post Falls Hydroelectric Project, Project No. 12606 ("Project"), in Kootenai and Benewah Counties, Idaho. Discharges from this Project influence water quality in portions of the Spokane River. Conditions imposed in this certification also address water quality effects that the Project may have within waters subject to the State of Idaho's jurisdiction in Coeur d'Alene Lake ("Lake"), Coeur d'Alene River, St. Joe River, and St. Maries River in Idaho.

This letter will serve as certification by the State of Idaho pursuant to the provisions of Section 401 of the Federal Water Pollution Control Act ("Clean Water Act"), as amended, 33 U.S.C. § 1341. If Avista complies with the terms and conditions set forth in this 401 certification, there is a reasonable assurance the operation of the Project will comply with the applicable requirements of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and the

Idaho Water Quality Standards, IDAPA 58.01.02, within waters subject to the State of Idaho's jurisdiction under the Clean Water Act.<sup>1</sup>

**THE FOLLOWING CONDITIONS ARE NECESSARY TO ENSURE COMPLIANCE WITH IDAHO WATER QUALITY STANDARDS:**

**I. LAKE LEVELS AND DISCHARGE FLOWS**

**A. Discharge Flows.**

1. Avista's operational target or goal shall be to achieve and then maintain the Lake at full-pool elevation at or near 2,128 feet ("summer full-pool elevation") as early as practicable each year and maintain the Lake elevation at or near 2,128 feet until the Tuesday after Labor Day. After such time, Avista shall initiate draw down of the Lake to an elevation no lower than 2,120 feet 6 inches ("fall draw down"). Lake elevations are to be determined using the USGS gage 12415500 (Coeur d'Alene Lake at Coeur d'Alene, or "Tubbs Hill" gage).

2. Avista shall achieve and maintain the summer full-pool elevation in a manner that is consistent with the Upper Spokane River Rainbow Trout Spawning and Fry Emergence Monitoring and Protection Plan (2004).

3. Beginning June 7 of each year, Avista shall maintain a minimum discharge of 600 cfs from the Project, as measured at the USGS gage 12419000 (Spokane River at Post Falls).

4. Should the lake elevation fall below 2,127 feet 9 inches during July, August, or September prior to the Tuesday following Labor Day ("low flow conditions"), Avista shall reduce the discharge from the Project to 500 cfs, and maintain the discharge at 500 cfs until fall draw down, unless operating for purposes of the monitoring program described in Section B.2. below.

5. Avista shall at all times operate the project to meet the required flows set forth in this certification. Avista shall be deemed in compliance with this condition so long as any short-term deviations are within 25 cfs of the required flows if, at the same time, daily mean flows are within 10 cfs of the required flows. In addition, Avista may

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<sup>1</sup> None of the terms and conditions of this 401 Certification, including water quality monitoring and the development and implementation of plans regarding the effects of the Project, are intended to address or apply to waters subject to the Coeur d'Alene Tribe's jurisdiction under the Clean Water Act.

deviate from the required flows as a result of the circumstances beyond Avista's reasonable control described in Section VI.B. of this certification. Within seven (7) days of any deviation resulting from such circumstances, Avista shall notify IDEQ of the deviation and the circumstances that caused the deviation.

**B. Monitoring Plan Regarding Discharge Flows.**

1. Avista shall, after issuance of a New License, develop, in consultation with IDEQ, a Monitoring Plan that includes the elements described below. The Monitoring Plan shall be submitted to IDEQ for approval within six months after issuance of a New License. The purpose of the Monitoring Plan is to evaluate data and assumptions upon which the required discharge flows are based. The Monitoring Plan shall address the relationship between discharge flows and water temperature in the Spokane River. The Monitoring Plan shall provide for five (5) years of monitoring. The Monitoring Plan shall include a Quality Assurance Control Project Plan ("QAPP"). The QAPP shall include (a) appropriate protocols for flow and temperature measurements, (b) flow monitoring conducted continually from July 1<sup>st</sup> through September 30<sup>th</sup> at the following locations, or at alternative locations agreed to by IDEQ and Avista: Spokane River at Post Falls (USGS 12419000), Spokane River at Greenacres (USGS 12420500) and Spokane River at Spokane, WA (USGS 12422500), and (c) a description of the manner in which Avista shall, in accordance with the requirements set forth in Section B.2., incrementally increase and monitor discharges during low flow conditions. The QAPP shall be consistent with applicable Idaho water quality law. Upon approval, the Monitoring Plan shall be implemented in accordance with the QAPP for a period of five (5) years, unless IDEQ determines that five (5) full years of monitoring are not necessary.

2. In order to monitor the effects of alternative discharge flows during low flow conditions when the reduction to 500 cfs would otherwise be required by Section I.A.4. of this certification, Avista shall, in accordance with the approved Monitoring Plan, incrementally increase and monitor flows up to 700 cfs during low flow conditions. Avista shall not, however, increase discharge flows above 600 cfs except upon prior notification to, and approval by, IDEQ.

**C. Data Review Decision Making.**

1. Avista shall provide all raw temperature and flow data collected to IDEQ as soon as practicable after September 30 each year. At the end of the five (5) years, or earlier, if monitoring is terminated by IDEQ, Avista shall submit a report of findings to IDEQ.

2. IDEQ intends to review the annual data and report of findings in coordination and consultation with the Idaho Department of Fish and Game, Washington Department of Ecology, Washington Department of Fish and Wildlife and the Coeur d'Alene Tribe. In addition, prior to making a final decision regarding whether discharge operations require modification, IDEQ shall provide for public notice and an opportunity for comment. After such coordination and consultation, IDEQ shall proceed as follows:

a. Should IDEQ determine the data supports the discharge operations required by Section I.A., Avista shall continue to operate the Project in accordance with Section I.A., except that Avista will no longer be required to implement the alternative discharge flows in Section I.B.2. of this certification. Avista shall notify FERC of IDEQ's decision.

b. Should IDEQ determine that the discharge operations set forth in Section I.A. require modification; IDEQ shall notify Avista of the required modification and Avista shall thereafter operate the Post Falls facility in compliance with the required modified discharge operations. Avista shall notify FERC of the modification in operations.

c. Should IDEQ determine that data are insufficient to make a determination regarding the discharge operations, Avista shall extend the period of data collection until at least two (2) years of data under "low-flow" conditions (when the reduced flow of 500 cfs is implemented) have been collected. Any additional data will be submitted to IDEQ as soon as practicable after September 30 each year. Within ninety (90) days of acquiring the two (2) years of such data, Avista shall submit a supplemental report to IDEQ. IDEQ shall review the supplemental report and data as provided in Section C.2. above and make a determination regarding discharge operations. Avista shall notify FERC of IDEQ's decision.

## II. WATER QUALITY MONITORING

A. Avista shall monitor or provide funding to IDEQ for monitoring of water quality parameters in the Spokane River upstream of the Post Falls Dam, and in Coeur d'Alene Lake and any tributaries of Coeur d'Alene Lake. This monitoring will be conducted according to the "*Continued Monitoring of Water Quality Status and Trends in Coeur d'Alene Lake, Quality Assurance Project Plan* (DEQ/Coeur d'Alene Tribe 2007 et seq.) (QAPP) or any revisions to the QAPP. In the event FERC, in the New License, requires Avista to develop a water quality monitoring plan for FERC approval that duplicates the monitoring described herein, the funding provided by Avista herein will be applied towards development of said plan (whether developed by IDEQ or Avista). The funding may also be used for other monitoring consistent with the

current or any revised Coeur d'Alene Lake Management Plan objectives, for the term of the New License. Expenditure of the funds on various monitoring projects will be governed by Section VIII.A. of this certification.

B. Avista shall make available \$50,000 annually for the term of the New License to implement the water quality monitoring described in Section II.A. of this certification. The \$50,000 shall be made available on or before July 1 of the first year of the New License, and on or before July 1 every year thereafter for the term of the New License. The funding provided by Avista shall be used to pay for work performed by IDEQ or any agreed-upon contractor to the state of Idaho, for the planning, implementing, or reporting components of this condition. Any funds not expended within one (1) year shall carry over and can be used in following years consistent with Section VIII.A. of the certification. Any funds carried over shall be in addition to the annual \$50,000 provided by Avista. The fact that funds have not been expended in one (1) year and are carried over does not diminish Avista's responsibility for providing \$50,000 annually for the life of the New License. Provided, however, funds which are carried over and not expended within five (5) years will no longer be available in accordance with section VIII. A. of the certification. The \$50,000 annual payment shall be adjusted in accordance with Section VIII.B. of this certification.

Avista's internal administrative costs to implement this condition shall be part of Avista's internal overall costs for license implementation and compliance. The funds described in this Section II.B. shall not be used to support Avista's internal administrative costs to implement this condition.

### III. WATER QUALITY IMPROVEMENT AND EROSION CONTROL

A. Avista shall develop and implement a Water Quality Improvement and Erosion Control Plan ("Plan"). The Plan shall include the following components:

1. **Water Quality Improvement and Erosion Control Plan.** Avista shall develop a Water Quality Improvement and Erosion Control Plan that identifies and prioritizes actions to protect and improve water quality associated with the Post Falls Project and protect beneficial uses. Avista shall include in the Water Quality Improvement and Erosion Control Plan site-specific erosion control actions. Consultation with stakeholders through the alternative licensing process ("ALP") has provided guidance regarding potential locations and types of erosion control actions that may be included in the Plan. (Stoker, 2004). The current Coeur d'Alene Lake Management Plan, or any revisions to the Lake Management Plan, may also provide Avista with a set of potential actions that could be implemented to reduce sedimentation, reduce nutrient loading, or improve water quality and protect beneficial uses.

2. **Five (5) Year Plan:** The Plan shall describe prioritized measures to be implemented in the first five-year period following the issuance of the New License.

B. Within the first year after the New License becomes effective, Avista shall develop and submit to IDEQ for approval the Water Quality Improvement and Erosion Control Plan. Upon approval by IDEQ, Avista shall implement the Plan. Every five (5) years after the New License becomes effective and continuing for the term of the license, Avista shall update and revise the Plan to describe those measures to be implemented within the following five (5) years. The updated Plan shall be submitted to IDEQ for approval, and upon approval by IDEQ, shall be implemented by Avista. Avista shall consult with IDEQ annually regarding those measures to be carried out within the year. Implementation of the Plan and expenditure of funds for specific projects will be governed by Section VIII.A. of this certification.

C. Avista will prepare and submit to IDEQ a summary report every five (5) years documenting implementation of the measures described in the Water Quality Improvement and Erosion Control Plan. The report shall be submitted to IDEQ, within six (6) months of the end of each reporting period. The report will summarize the activities conducted under this condition during the preceding five (5) years and the results achieved, the overall results achieved to date (subsequent to first 5-year period), and the general nature of the activities that will be implemented during the next 5-year period.

D. By July 1<sup>st</sup> after the effective date of the New License, and every July 1<sup>st</sup> thereafter for the term of the New License, Avista shall make available \$75,000 to implement this condition. Any funds not expended within one (1) year shall carry over and can be used in the following year consistent with Section VIII.A. of this certification. Any funds carried over shall be in addition to the annual \$75,000 provided by Avista. The fact that funds have not been expended in one (1) year and are carried over does not diminish Avista's responsibility for providing \$75,000 annually for the term of the New License. Provided, however, that funds which are carried over and not expended within five (5) years shall no longer be available in accordance with Section VIII.A. of the certification. The funding provided by Avista shall be used to pay for work by Avista, IDEQ or their contractors for planning, implementing, or reporting components of this measure. The \$75,000 annual payment shall be adjusted in accordance with section VIII. B. of this certification.

Avista's internal administrative costs to implement this measure shall be part of Avista's internal costs for license implementation and compliance. The funds described in this Section III.B. shall not be used to support Avista's internal administrative costs to implement this condition.

#### IV. WETLAND AND RIPARIAN HABITAT PROTECTION AND ENHANCEMENT

A. Avista shall develop and implement a Wetland and Riparian Habitat Protection and Enhancement Plan (Plan). The Plan shall include the following components:

1. **Wetland and Riparian Habitat Protection and Enhancement Plan.** Avista's Wetland and Riparian Habitat Protection and Enhancement Plan shall include actions to identify, evaluate, and undertake wetland and riparian habitat protection, restoration, creation, and enhancement projects. Preference will be given to sites where perpetual protection is possible; to existing wetlands associated with or in proximity to the Project, with an emphasis on those that cannot be easily replaced through mitigation; and to sites that are "in basin" and "in kind" to the Project-affected wetlands.

2. **Five (5) Year Plan.** The Plan shall set forth and describe a prioritized set of measures to be implemented in the first five (5) year period following the effective date of the New License.

B. Within the first year after the effective date of the New License, Avista shall develop and submit the Plan to IDEQ for approval. IDEQ shall consult with the Idaho Department of Fish and Game ("IDFG") regarding the Plan. Once approved by IDEQ, Avista shall implement the Plan. Every five (5) years beginning with the approval of the first Plan and continuing for the term of the New License, Avista shall update the Plan to describe those measures to be implemented within the next five (5) years. The updated Plan shall be submitted to IDEQ, for approval, and upon approval, shall be implemented by Avista. Avista shall consult with IDEQ and IDFG annually regarding those measures to be carried out within the year. Implementation of the Plan and expenditure of funds for specific projects will be governed by Section VIII.A. of this certification.

C. Avista will prepare and submit to IDEQ a summary report every five (5) years documenting implementation of the measures described in the Plan. The report shall be submitted to IDEQ within six (6) months of the end of each reporting period. The report will summarize the activities conducted under this condition during the preceding five (5) years and the results achieved, the overall results achieved to date (subsequent to first 5-year period), and the general nature of the activities that will be implemented during the next 5-year period.

D. By the first July 1<sup>st</sup> after the effective date of the New License, and every July 1<sup>st</sup> thereafter for the term of the New License, Avista shall make available \$75,000 to implement this condition. Any funds not expended within one (1) year shall carry over and can be used in the following year consistent with Section VIII.A. of this certification. Any funds carried over shall be in addition to the annual \$75,000 provided by Avista. The fact that funds have not been expended in one (1) year and are carried over does not diminish Avista's responsibility for

providing \$75,000 annually for the life of the New License. Provided, however, that funds which are carried over and not expended within five (5) years shall no longer be available in accordance with Section VIII.A. of this certification. The funding provided by Avista shall be used to pay for work by Avista, IDEQ, or their contractors for the planning, implementing, or reporting components of this condition. The \$75,000 annual payment shall be adjusted in accordance with Section VIII.B. of this certification.

Avista's internal administrative costs to implement this measure shall be part of Avista's internal costs for license implementation and compliance. The funds described in this Section IV.D. shall not be used to support Avista's internal administrative costs to implement this condition.

V. POST FALLS PROJECT SPAWNING AND EMERGENCE FLOWS

A. Avista will comply with the Post Falls Project discharge levels as outlined in the *Upper Spokane River Rainbow Trout Spawning and Fry Emergence Protection Plan* ("Plan") (Avista, 2004), or as this Plan may be revised through consultation with cooperating resource agencies and subject to FERC approval, if required. The Plan addresses Project impacts on the aquatic environment and was developed by Avista in consultation with IDFG, the United States Fish and Wildlife Service ("USFWS"), WDFW, and the Coeur d'Alene Tribe for the purpose of maintaining Project flow releases in the Spokane River to protect wild rainbow trout spawning and incubation.

VI. POST FALLS PROJECT RAMPING RATE; OPERATING CONDITION EXCEPTIONS

A. Avista shall maintain a maximum allowable per-hour discharge down-ramping rate at the Project that corresponds to no more than a 4-inch reduction per hour in downstream water levels at the USGS gage located on the Spokane River near Post Falls (USGS Gage No. 12419000). The required discharge down-ramping rates will be determined using USGS rating tables for this gage.

B. Post Falls Project discharge flow conditions and restrictions are required under normal operating conditions. Exceptions to these normal operating conditions include operating emergencies beyond the reasonable control of Avista, such as might occur due to safety concerns or unexpected electrical or mechanical failure. The flow conditions and restrictions may be revised on a temporary basis for other reasons if IDEQ approves the change in operations after consulting with the natural resource and/or public safety agencies, as it deems necessary.

## VII. FISHERY PROTECTION AND ENHANCEMENT

A. Avista shall develop and implement a Fishery Protection and Enhancement Plan in accordance with Exhibit 1 of this certification.

## VIII. FUNDING

A. Except as otherwise provided in this Section VIII., all funds to be provided by Avista described in this certification will be subject to the cost caps set forth in the certification and will remain in Avista's control until individual measures or activities required by this certification are implemented. Avista will fund individual measures and activities as they are implemented, in accordance with the plans required by this certification, and in coordination with IDEQ and, when applicable, IDFG. All funds required by this certification to carry out measures or activities include the costs of permitting such measures and undertaking any necessary studies and monitoring. If funds are made available for measures or activities conducted by IDEQ or IDFG, IDEQ or IDFG shall provide an accounting/invoice to Avista quarterly. Within 30 days of receipt, Avista shall reimburse IDEQ or IDFG for the costs set forth in the accounting/invoice, up to the cost caps set forth in this certification. Funds not expended in a given year will remain available during the subsequent five (5) years and will not bear interest or be further escalated pursuant to Section VIII.B. below. Any funds provided by Avista pursuant to this certification or any funds carried over may be used to carry out and fund any measures set forth in Sections II, III, IV and VII of this certification. Funds carried over and not spent within five (5) years will no longer be available to implement the conditions of the certification.

B. Unless otherwise indicated, all costs or payment amounts specified in dollars shall be deemed to be stated as of the year the New License is issued. Annual funding required by this certification will be adjusted according to a formula agreed to by IDEQ, IDFG, and Avista.

C. In the event conditions in the New License require actions on the part of Avista that duplicate or overlap with the requirements of this certification, IDEQ and Avista shall cooperate to avoid duplication of effort and cost. IDEQ and Avista may agree that actions required by FERC in the New License also fulfill, in whole or in part, certain funding and other obligations required under this certification. In the event IDEQ agrees there is such overlap or duplication, Avista's obligations under this certification will be proportionately reduced and accounted for in the reports and plans required in this certification.

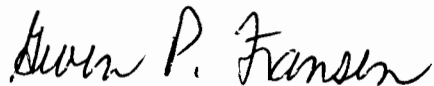
## IX. OTHER PROVISIONS

IDEQ reserves the right to amend this certification as authorized under applicable law if it discovers new information not reasonably ascertainable regarding Project impacts that have a

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significant adverse effect on water quality which is not addressed in this 401 certification. Avista retains all rights under applicable law to challenge or appeal any attempt by IDEQ to amend this certification. This 401 certification and associated conditions may be appealed by submitting to IDEQ a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, within 35 days of the date of this letter.

Sincerely,



Gwen P. Fransen  
Regional Administrator  
Idaho Department of Environmental Quality

rs/DH

cc: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission  
Barry Burnell, Water Program Administrator, IDEQ, Boise  
Douglas Conde, Deputy Attorney General, IDEQ, Boise  
Johnna Sandow, 401 Coordinator, IDEQ, Boise  
Chip Corsi, Regional Supervisor, IDFG, Coeur d'Alene  
Harriet Hensley, Deputy Attorney General, Natural Resources Division, Boise

## EXHIBIT 1

A. Fishery Protection and Enhancement Plan. Avista shall develop and implement a Fishery Protection and Enhancement Plan (“Plan”) that includes the following components:

1. The Plan shall identify and describe fish habitat protection and enhancement activities, fish population assessment and monitoring activities, and education/outreach actions that will be implemented over the term of the New License. Potential actions are outlined in the *Coeur d’Alene Lake Basin Bull Trout and Westslope Cutthroat Trout Protection, Mitigation, and Enhancement Implementation Plan* (Kleinschmidt, 2004) (2004 Plan). The 2004 Plan, developed by Avista, technical working groups, and fisheries managers describes a framework for Avista’s participation in basin-wide efforts to improve the aquatic environment for bull trout and westslope cutthroat trout. The 2004 Plan provides for Avista to work with fishery resource managers to select and implement aquatic habitat restoration and restoration measures commensurate with project-related impacts on fishery and aquatic resources. Basin-wide activities include riparian habitat restoration and protection projects; acquisition or other long-term protection of private lands where aquatic habitat important to bull trout and westslope cutthroat trout exists; suppression of exotic species; collection of required or relevant baseline data; fish stocking programs to deflect recreational angling pressure away from wild populations of bull trout and westslope cutthroat trout; and strategies to prevent illegal harvest of wild rainbow trout from the Spokane River.

2. The Plan will identify and describe a prioritized set of measures to be implemented or funded in the first five-year (5) period after the New License becomes effective.

B. Within the first year after the New License becomes effective, Avista shall submit to IDFG, for approval, the Plan that includes the above-described components. IDFG shall consult with IDEQ and USFWS regarding the Plan. Upon approval by IDFG, Avista shall implement the Plan. Within the first five (5) years after the New License becomes effective, Avista will implement at least one enhancement project that improves bull trout habitat. Every five (5) years after the New License becomes effective, and continuing for the term of the New License, Avista shall update and revise the Plan to identify and describe actions to be carried out within the following five (5) years. The updated Plan shall be submitted to IDFG for approval. IDFG shall consult with IDEQ and USFWS before approving an updated Plan. Priority shall be given to projects that enhance benefits for multiple native salmonids. Upon approval of an updated Plan, it shall be implemented by Avista. Avista shall consult with IDFG, IDEQ, and USFWS annually regarding those activities to be carried out within the year.

C. Avista shall prepare and submit to IDFG and IDEQ a summary report every five (5) years documenting implementation of the measures described in the Plan. The report shall be submitted to IDEQ and IDFG within six (6) months following each reporting period. The report will summarize the activities conducted under this measure during the preceding five (5) years and the results achieved, the overall results achieved to date (subsequent to the first five (5) year period), and the general nature of the activities that will be implemented during the next five-year (5) period.

By the first July 1<sup>st</sup> after the New License becomes effective, and every July 1<sup>st</sup> thereafter for the term of the New License, Avista shall make available \$150,000 to implement this condition. Any funds not expended within one (1) year shall carry over and can be used in the following year consistent with Section VIII.A. of IDEQ's 401 certification. Any funds not expended for the specific measures outlined in the Plan may also be used in accordance with Section VIII.A. of IDEQ's 401 certification. Any funds carried over shall be in addition to the annual \$150,000 provided by Avista. The fact that funds have not been expended in one (1) year and are carried over does not diminish Avista's responsibility for providing \$150,000 annually for the term of the New License. Provided, however, that funds which are carried over and not expended within the subsequent five (5) years shall no longer be available in accordance with Section VIII.A. of IDEQ's 401 certification. The funding provided by Avista shall be used to pay for work by Avista, IDFG, or their contractors for the planning, implementing, or reporting components of this condition. Avista's internal administrative costs to implement this condition, shall be part of Avista's internal overall costs for license implementation and compliance, and will not be supported by the funding identified above. The \$150,000 annual payment shall be adjusted in accordance with Section VIII.A. of IDEQ's 401 certification.