

Timeline of Events Related to Oakdale/Norway Dam Licensing Controversy
August 2012 – April 2023

August 2012: A summer drought results in a phone call to the U.S Fish and Wildlife Service (FWS) in Bloomington reporting that downstream mussel beds on the Tippecanoe River were exposed to air and mussels were dying.

August 2012: FWS, citing the Endangered Species Act, mandates NIPSCO release a minimum of 200cfs of water out of the dam to “preserve the endangered species of mussels” identified downstream, causing NIPSCO to violate its Federal Energy Regulatory Commission (FERC) issued license of required lake levels.

WINTER 2013-2014: A dry autumn resulted in a “low flow event” and NIPSCO complying with FWS Technical Assistance Letter (TAL) and lowering water levels a foot below the ice cover.

August 1 – 11, 2014 - Another “low flow event” causes a second drop and lowers Lake Freeman by 23 inches for a two-week period; essentially eliminating access to Lake Freeman by property owners and businesses dependent on lake activity.

August 9, 2014: SFLECC Annual meeting; shore front license holders voice concerns and request SFLECC do whatever it takes to maintain the lakes’ levels.

August 12, 2014: Meeting at U.S. Senator Dan Coats office with representatives of NIPSCO, FWS, FERC, IDNR with Congressman Todd Rokita present.

August 14, 2013: US Fish and Wildlife Issues Technical Assistance Letter (TAL) that increases the release requirement to a minimum of 500 cfs (later increased to 570 cfs) by NIPSCO.

August 21, 2014: SFLECC forms an AD Hoc “Keep the Lake Levels” Task Force, consisting of three SFLECC board members and three community partners, and is tasked with collecting data and working on the lake problem.

August 21, 2014: Nighttime rains cause Lake Freeman to begin rising from 608 ft level.

August 23, 2014: Lake returns to “normal 610 ft” levels.

September 12, 2014: U.S. Rep. Todd Rokita calls for a town meeting in Monticello to discuss lake level problems. Representatives for U.S. Senators Dan Coats and Joe Donnelly are present.

September 22, 2014: SFLECC serves FERC with Request for Rehearing on Temporary FWS TAL.

October 2, 2014: SFLECC meets with elected officials from White and Carroll counties.

October 3, 2014: Chamber of Commerce sends surveys to local businesses affected by the lowered lake levels.

October 14, 2014: SFLECC Board votes to set up special fund for legal costs. Approves \$30,000 from reserves for legal expenses. (As of April 2023, SFLECC has spent over \$500,000 in legal fees.)

October 31, 2014: “Keep the Lake Levels” Ad Hoc Task Force agrees to hire the Washington D.C. law firm of Smith, Currie, and Hancock.

November 3, 2014: The Monticello City Council issues a resolution in support of SFLECC’s efforts in the preservation of Lake Freeman and Shafer water levels and donates \$2,500.

November 17, 2014: The County Commissioners and Council of White County authorize the development of a \$2,500 Tourism Impact Study of White County. Carroll County; White County Commissioners; City of Monticello; Jefferson Twp; White and Carroll County Commerce Development organizations donate a total of \$13,000 to the Keep the Lake Levels Fund.

December 5, 2014: SFLECC begins fundraising from individuals for defense of the lakes.

May 15, 2015: SFLECC files its formal opposition with FERC to NIPSCO’s license modification resulting from FWS mandate.

October 9, 2015: FERC issues draft Environmental Assessment (DEA) largely concurring with SFLECC’s position that the TAL issued by the FWS had no scientific merit and did little to protect the endangered mussel species. FERC stated that the FWS’ mandate to operate Oakdale Dam was not representative of “run-of-the-river” conditions and “drawdowns would result in frequent and substantial adverse effects on other environmental resources associated with Lake Freeman.” (EA Executive Summary vi, paragraph 3).

FERC’s and SFLECC’s position is that NIPSCO should stop generating power in low water periods and continue the concept of keeping the lake levels constant.

December 15, 2015: SFLECC raises shorefront license fees to continue its office operations and fund legal fees incurred in the three-year battle with FWS.

May 10, 2016: FERC schedules a public hearing in Monticello for comment on the draft Environmental Assessment. The hearing results in an overflow audience and lasts over three hours.

August 16, 2016: FERC publishes its final report that largely resembles the SFLECC’s position against the U.S. Fish and Wildlife Service.

November 10, 2016: FERC sends letter to FWS requesting concurrence with its findings.

December 9, 2016: FWS refuses to concur with FERC's findings.

February 17, 2017: At the suggestion of State Senator Brandt Hershman, the SFLECC sends letter to Vice President Mike Pence seeking his assistance in expediting the final resolution. No reply received.

February 27, 2017: FWS and FERC enter final "formal consultation", assessing alternatives for dam operations as proposed by FERC in the Final Environmental Assessment.

July 5, 2017: FWS presents its "Biological Opinion" findings, holding to its 2014 position but adds that the FERC Staff Alternative for operational changes in dam operations "are not likely to jeopardize the continued existence" of endangered mussel species and is "not likely to destroy or adversely modify designated critical Habitat". The matter is referred to the FERC commissioners and FWS representatives for deliberation and consultation.

August 10, 2017: Due to pressure from SFLECC, USCGS agrees to install and use river flow speed sensing equipment at Buffalo on Tippecanoe River north of Lake Shafer.

September 30, 2017: SFLECC Files Observations and Comments on FWS Biological Opinion through attorneys at Smith, Currie, & Hancock.

October 3, 2017: SFLECC attorneys submit a 20-page letter to FERC seeking "interested party" designation for the SFLECC to submit input in the consultation.

June 18, 2018: FERC Commissioners have still not voted on or announced the fate of the "Temporary NIPSCO" license. TAL provisions still in effect. Possibility of lake lowerings still a possibility due to Linear Scaling concept.

July 13, 2018: Despite recommendations by the FERC Staff (called The FERC Staff Alternative) FERC Commissioners vote to make the temporary license for the Oakdale/Norway Dam operations during low flow periods that was issued to NIPSCO in 2014, permanent.

July 20, 2018

Low river flow triggers activation of abnormal low flow provisions of NIPSCO license at Oakdale.

July 21, 2018

SFLECC files a request for rehearing of the issue with FERC citing several errors of commission and omission by FERC Commissioners in their decision to make the temporary license for dam operation permanent.

August 20, 2018

FERC acknowledges our filing but does not make a decision.

January 17, 2019

FERC denies our request for rehearing.

January 29, 2019

Task Force votes to proceed with filing in DC Federal Court, pending Board approval, and stakeholder financial support.

March 15, 2019

Our DC attorney files Petition for Review with the Court of Appeals for the DC Circuit challenging FERC's decision to permanently change NIPSCO's License.

April 16, 2019

NIPSCO files Motion to Intervene.

May 2, 2019

FWS files Motion to Intervene.

September 3, 2019

FWS files a Motion to submit a separate Administrative Record, further delaying the Court of Appeals timeline.

September 23, 2019

Low river flow triggers activation of Abnormal Low Flow provisions of NIPSCO' license.

November 15, 2019

Court issues Briefing Schedule, showing Final Briefs due by April 13, 2020.

December 23, 2019

DC Court suspends the briefing schedule pending further order from the Court, likely because of FWS complicating the case with items they wanted to file.

January 25, 2020

SFLECC Brief was filed with the DC Court.

March 25, 2020

FERC files their Brief with the DC Court.

May 19, 2020

SFLECC Attorney files our Reply Brief with the DC Court.

June 22, 2020

Final Briefs filed with the Court. Now we wait for the Court to review and then schedule the Oral Arguments.

July 31, 2020

ALF event begins and continues through February 2021, lowering Lake Freeman nearly 16 ft below normal.

October 5, 2020

Oral arguments are presented to three judges of the Court of Appeals for the DC Circuit. (Done via Zoom due to COVID-19.)

November 2, 2020

NIPSCO requests a Temporary Variance from FERC to be ready to release water from Lake Shafer should the prolonged drought continue.

December 23, 2020

FERC approves the Temporary Variance for Norway Dam/Lake Shafer. (Note: Variance ends March 31, 2021.)

March 26, 2021

The Court of Appeals for the DC Circuit issued their Opinion and Order. The court sent the case back to FERC for FERC and FWS to determine if the reasonable and prudent measure (RPM/TAL) only constituted a “minor change” to the operation of the dam/lakes. However, the Court upheld FWS use of linear scaling.

August 30, 2021

FERC issues letter to FWS directing them to determine if the RPM(TAL) is a minor change within 60 days.

September 8, 2021

An ALF event begins due to lack of rain in the area. It continues into October.

May 11, 2022

SFLECC's DC attorney sends letter to FERC and FWS calling them on their lack of response to the Court's Order, giving them 30 days before we file a Writ of Mandamus with the DC Court.

May 12, 2022

FWS issues letter acknowledging that based on the 2020 drawdown of Lake Freeman, the current RPM(TAL) is NOT a minor change; and that FWS plans to meet with the affected parties/agencies to revise the RPM(TAL).

May 26, 2022

SFLECC's DC attorney issues letter to FERC stating that FERC should immediately revert back to the pre-TAL license due to FWS' acknowledgement that the RPM is not a minor change.

May 27, 2022

NIPSCO issues letter to FERC requesting that the SFLECC be invited to participate in the meeting revising the RPM(TAL).

May 31, 2022

NIPSCO attorney issues statement to FERC in response to SFLECC's request to abandon the FERC License Amendment; stating that their understanding is that the Court states it stays in place until the revision can be determined.

June 29, 2022

SFLECC, NIPSCO and USFW meet in Indianapolis. USFW reiterates their earlier letter that the RPM(TAL) needs revised and asks for our input as to what the revision should be. After discussion, NIPSCO and SFLECC agree to crunch numbers on various revised minimum flows in the 300-400 cfs range.

July 8, 2022

Virtual Meeting with USFWS, NIPSCO and SFLECC. NIPSCO and SFLECC each presented their data. Negotiations on the minimum CFS began. A compromise was reached of 315 cfs. Some discussion of next steps took place.

August 5, 2022

Follow up virtual meeting with FERC, USFW, NIPSCO and SFLECC to learn from FERC the process and possible timeline for the Amendment.

August 26, 2022

NIPSCO formally submits their request to FERC for the Amendment to their license.

September 29, 2022

FERC issues an Order Approving Temporary Amendment incorporating the new minimum flow parameters. Temporary Order expires December 31, 2022.

March 30, 2023

FERC issues Order approving the Amendment of the NIPSCO License to incorporate the revised minimum flow and the new parameters surrounding that new number.