

Memorandum

To: Michael Sale, Senior Technical Advisor, LIHI
From: Jeffrey Cueto, P.E.
Date: August 19, 2017
Re: Newfound Hydroelectric Project – LIHI Certificate #82
Recertification Request

This memorandum contains the results of my review of the recertification request for the Newfound Hydroelectric Project (Project), located in the village of Bristol, N.H. on the Newfound River, a tributary of the Pemigewasset River in the headwaters of the Merrimack River basin. The facility is owned by KTZ Hydro, LLC (Applicant), a subsidiary of Eagle Creek Renewable Energy, LLC.¹ FERC granted the Project a 50-year license as Project No. 3107 on November 6, 1981. There are no other operating hydroelectric facilities on the river; however, the State of New Hampshire owns and operates the dam at the outlet of Newfound Lake about three miles upstream. LIHI publicly noticed the application for recertification on December 8, 2016, with comments due by February 10, 2017. No comments were filed in response to this formal notice.

The Project was originally certified on November 17, 2011 for a five-year term beginning May 13, 2011.² Certification was subject to three special conditions related to flow monitoring and record keeping; an increase in the bypass conservation flow from 5 cfs as licensed to 12.7 cfs; and notification of LIHI should a resource agency request or prescribe fish passage at the dam. The certification term has been extended several times to accommodate the recertification application review; the present termination date is September 30, 2017.

I. Recertification Review Standards.

In 2016, LIHI began reviewing new applications, both initial applications and recertification applications, under a revised set of criteria and an updated process, all outlined in the Low Impact Certification Program 2nd Edition Handbook (March 7, 2016). Section 6 of the Handbook addresses the recertification process, which is comprised of two stages. Under Stage I, LIHI can expeditiously recertify a project if it has a complete application and finds that there is neither a material change in the criteria or process or a material change in the facility that may affect conformance with the criteria. If a material change determination is made, then the application moves to Stage

¹ By letter dated July 17, 2015, Eagle Creek notified FERC of its acquisition of KTZ Hydro, LLC.

² The reviewer report from 2011 is available at <http://lowimpacthydro.org/wp-content/uploads/2011/11/NewfoundCertificationFinalReport10Nov2011.pdf>

II for a full review under the criteria. Since the Project has not previously been subject to review under the new Handbook criteria and because that fact alone constitutes a

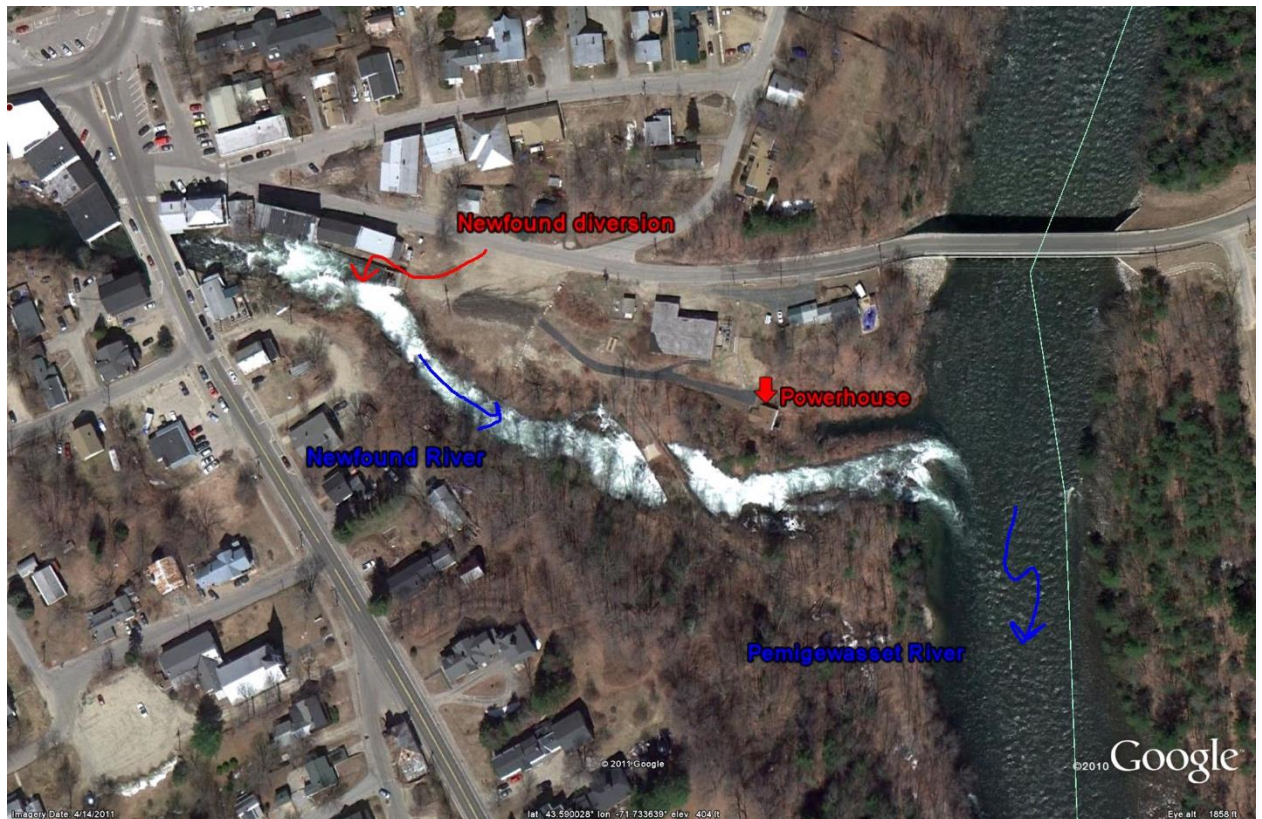


Figure 1. Project layout.

material change, the application is subject to a Stage II full review under the revised criteria. The scope of review as described in the Handbook is:

The Stage II recertification review involves a complete review of the application package, a search of public records associated with the facility, and all other necessary inquiries (e.g., to resource agencies and local non-governmental organizations) to resolve factual disputes, evaluate the veracity of claims, or make other inquiries as needed. The application reviewer also reviews and summarizes all public comments received.

...

At the conclusion of the full, Stage II review, the application reviewer will produce a detailed reviewer's report similar to that issued for an initial certification and make a recommendation to the Executive Director as to whether LIHI's criteria are still met by the facility, in light of the material change and/or the change in LIHI's criteria or interpretation.

The application indicates that the physical plant and its operation have not materially changed since the facility was first certified in 2011.

II. Summary Recommendation.

Based on my review of the record, including the original LIHI reviewer report from 2011 and the files contained in FERC eLibrary and entered subsequent to the last certification review, as well as consultation with resource agencies, I recommend that the Newfound Project be recertified for the standard period of five years, subject to four conditions to address water quality, environmental flows, compliance record keeping, and fish passage, the latter three being carried forward from the original certification:

Issue 1: The New Hampshire Department of Environmental Services recommends that the Owner complete a water quality sampling study in order to demonstrate continued compliance with state water quality standards. The available data is not considered sufficiently current to represent present water quality conditions.

Condition: The Owner shall complete a water quality sampling study during summer 2018 under a study plan approved in advance by the New Hampshire Department of Environmental Services (NHDES). The study plan shall be filed with NHDES no later than October 1, 2017. A copy of the final study plan shall be filed with LIHI within 30 days of NHDES approval. The data and study report shall be filed with NHDES and LIHI by December 31, 2018. If the Newfound Project is determined to be causing, or contributing to, substandard water quality, a remediation proposal, including an implementation schedule, shall be developed in consultation with NHDES and filed with LIHI by April 1, 2019. Otherwise, the Owner shall file review comments/recommendations from NHDES by the same date. LIHI may suspend certification or further condition the certification based on the study findings or recommendations of NHDES.

Issue 2: Pursuant to the original certification, the conservation flow in the penstock-bypassed reach was enhanced beyond the minimum set forth in the 1981 federal license. That flow should continue to be provided during the term of the LIHI certification.

Condition: The Owner shall continue to maintain a minimum flow of 12.7 cfs, or instantaneous inflow if less, through the penstock-bypassed reach of river.

Issue 3: Pursuant to the original certification, a flow management plan was developed for the Project. The Owner should continue to utilize the plan in order to assure compliance with run-of-river operation and bypass minimum flows and should continue to maintain compliance records.

Condition: The Owner shall continue maintain systems and protocols necessary to assure compliance with the headpond elevation and flow management limitations of instantaneous run-of-river operation and the release of a minimum bypass flow as specified in Condition No. 2 and to maintain records demonstrating compliance.

Records shall be made available to state and federal resource agencies and to LIHI on request.

Issue 4: Pursuant to the original certification, given that no fish passage facilities are in place at the Project, LIHI is to be notified if there is a resource agency request or prescription for fish passage during the LIHI certification term.

Condition: In the event that, within the 5-year term of the certification, a fisheries agency requests or prescribes upstream or downstream fish passage at the Project, the Owner shall notify LIHI within 30 days of such action and the steps that the Owner is prepared to take to install appropriate passage at the Project dam. In the event that the Owner notifies LIHI that it does not intend to install appropriate passage, or that the Owner cannot reach an agreement with the resource agency, or agencies, as to the nature of this passage, LIHI reserves the right to withdraw its certification should LIHI determine that the Owner's position is inconsistent with the LIHI fish passage criteria at that time.

No Plus Standards are met that would extend the term of the certification for more than five years.

For the last five years, FERC eLibrary contains no documents indicating any issues or license violations relevant to the LIHI standards.

III. Standards Review

Criterion A - Ecological Flow Regimes

Goal: The flow regimes in riverine reaches that are affected by the facility support habitat and other conditions suitable for healthy fish and wildlife resources.

Review: The Newfound Project operates as a true run-of-river facility, maintaining a bypassed-reach conservation flow of 12.7 cfs through a notch in the 12-inch-high flashboards. The flashboards are maintained on the dam crest year around. The storage capacity of the impoundment is negligible; the headpond is about 300 feet long and 0.1 acre in surface area.

Condition 1 of the original certification required the development of a flow management plan for instantaneous run-of-river operation and maintenance of bypass flows. The plan was presented in a letter dated April 26, 2012 to LIHI. Technically, the plan was to have been approved by the U.S. Fish and Wildlife Service (USFWS) and NHDES before filing with LIHI; however, the LIHI records do not indicate that was done. Nevertheless, the plan, including automation of the station and notching of the flashboards, appears to be well designed and implemented. The letter states that the headpond level is maintained within a half an inch after the system reaches equilibrium and that the

operation can match inflow even with variations caused by the operation of the dam at Newfound Lake.

The penstock-bypassed reach is about 870 feet long and primarily cascade-type habitat. It ends at the Pemigewasset River as the Project discharges directly into the Pemigewasset via a 175-foot-long tailrace channel. The bypass minimum flow of 12.7 cfs was recommended by the USFWS and the New Hampshire Department of Fish and Game (NHDFG) based on a flow-observation study completed on October 6, 2011 for the purposes of the original certification application. The conclusions from the study are contained in an email dated October 25, 2011 from the USFWS (see Appendix). Both the USFWS and NHDFG support continuation of the current minimum flow based on correspondence provided in the recertification application. I also spoke to John Warner, USFWS on August 6, 2017, and he restated his support for the current operation. The bypass habitat is not prime fish habitat due to its steepness and substrate type.



Figure 2. A section of the bypassed reach, looking downstream.

The tailrace extends 175 feet from the powerhouse to the Pemigewasset River upstream of the Newfound River confluence. When the station is off line, only leakage flows pass through the tailrace; however, the tailrace is backwatered by the river, and the USFWS has no fisheries concerns according to a May 4, 2017 email from the Applicant, appended.

By letter dated March 18, 2016, FERC notified Eagle Creek that it was not required to file annual minimum flow compliance reports for the Project. Eagle Creek had filed a report for 2015 on March 4, 2016 stating that minimum flows had been maintained at

the Newfound Project as well as twelve other projects throughout the year. The report for 2015 is the only minimum flow compliance report contained in FERC eLibrary for the period following the original LIHI certification.

Conclusion: The Ecological Flow Regime Standard A-4 (*Site-Specific Studies*) is met in the bypassed-reach zone as the minimum flow was derived from on-site flow observations made by resource agency representatives. In the tailrace zone (Pemigewasset River), no study was necessary as the run-of-river flow management meets LIHI's definition and can be considered to have a de minimis effect (Standard A-1). This determination is contingent on the following conditions being incorporated in the recertification:

1. The Owner shall continue to maintain a minimum flow of 12.7 cfs, or instantaneous inflow if less, through the penstock-bypassed reach of river.
2. The Owner shall continue maintain systems and protocols necessary to assure compliance with the headpond elevation and flow management limitations of instantaneous run-of-river operation and the release of a minimum bypass flow as specified in Condition No. 2 [as numbered on Page 3 above] and to maintain records demonstrating compliance. Records shall be made available to state and federal resource agencies and to LIHI on request.

Criterion B - Water Quality

Goal: Water Quality is protected in waterbodies directly affected by the facility, including downstream reaches, bypassed reaches, and impoundments above dams and diversions.

Review: For the purposes of the original LIHI-certification process, water quality samples were collected in summer of 2011 as recommended by NHDES. Data included dissolved oxygen, water temperature, phosphorus, and chlorophyll-a. Based on the sampling results, NHDES concluded that the Project as it was being operated at that time was not violating the water quality criteria for dissolved oxygen, phosphorus, and chlorophyll-a. (Letter from NHDES to LIHI, November 14, 2011)

Based on the NHDES's 2014 water quality assessment, the Newfound River is not federal Clean Water Act Section 303(d) listed (impaired designated uses for which a Total Maximum Daily Load is required for attainment) either immediately upstream (Assessment Unit NHIMP700010603-04) or immediately downstream (Assessment Unit NHRIV700010603-12) of the Facility dam. The documentation from the water quality assessment is shown in the following table.

Severe Not Supporting, Severe	Poor Not Supporting, Marginal	Likely Bad Insufficient Information - Potentially Full Supporting	No Data No Data	Likely Good Insufficient Information - Potentially Full Supporting	Marginal Full Support, Marginal	Good Full Support, Good
----------------------------------	----------------------------------	---	--------------------	--	------------------------------------	----------------------------

*DES Categories: 2-G = Supports Parameter well above criteria, 2-M = Supports Parameter marginally above criteria, 2-OBS = Exceeds WQ criteria but natural therefore not a WQ exceedence, 3-ND = Insufficient Information/No data, 3-PAS= Insufficient Information/Potentially Attaining Standard, 3-PNS= Insufficient Information/Potentially Not Attaining Standard, (4A=Impaired/TMDL Completed, 4B=Impaired/Other Measure will rectify Impairment, 4C=Impaired/Non-Pollutant, 5=Impaired/TMDL needed) M=Marginal Impairment, P=Severe Impairment, T=Threatened (<http://des.nh.gov/organization/divisions/water/wmb/swqa/index.htm>)

Page 29 of 36
March 27, 2017

Assessment Unit ID NHIMP700010603-04 Size 0.2300 ACRES 2014, 305(b)/303(d) - All Reviewed
Assessment Unit Name NEWFOUND RIVER Beach N Parameters by Assessment Unit
Primary Town BRISTOL Assessment Unit Category*~ 3-PAS

Designated Use Description	*Desig. Use Category	Desig. Use Threat	Parameter Name	Parameter Threatened (Y/N)	Last Sample	Last Exceed	Parameter Category*	TMDL Priority	Source Name (Impairments only)
Aquatic Life	3-PAS		Chlorophyll-a	N			3-ND		
			DISSOLVED OXYGEN SATURATION		2011	NA	2-G		
			OXYGEN, DISSOLVED		2011	NA	2-G		
			PH		2011	NA	2-G		
Drinking Water After Adequate Treatment	2-G								
Fish Consumption	4A-M		Mercury	N			4A-M		Atmospheric Deposition - Toxics
Primary Contact Recreation	3-PAS		CHLOROPHYLL-A	N	2011	NA	2-G		
			Escherichia coli	N			3-ND		
Secondary Contact Recreation	3-ND		Escherichia coli	N			3-ND		
Wildlife	3-ND								

Assessment Unit ID NHRIV700010603-12 Size 0.2080 MILES 2014, 305(b)/303(d) - All Reviewed
Assessment Unit Name NEWFOUND RIVER Beach N Parameters by Assessment Unit
Primary Town BRISTOL Assessment Unit Category*~ 3-PAS

Designated Use Description	*Desig. Use Category	Desig. Use Threat	Parameter Name	Parameter Threatened (Y/N)	Last Sample	Last Exceed	Parameter Category*	TMDL Priority	Source Name (Impairments only)
Aquatic Life	2-G		DISSOLVED OXYGEN SATURATION		2011	NA	2-G		
			OXYGEN, DISSOLVED		2011	NA	2-G		
			PH		2011	NA	2-G		
Drinking Water After Adequate Treatment	2-G								
Fish Consumption	4A-M		Mercury	N			4A-M		Atmospheric Deposition - Toxics
Primary Contact Recreation	3-PAS		CHLOROPHYLL-A	N	2011	NA	2-G		
			Escherichia coli	N			3-ND		
Secondary Contact Recreation	3-ND		Escherichia coli	N			3-ND		
Wildlife	3-ND								

Table 1. NHDES 2014 Water Quality Assessment Information.

NHDES's 2016 draft water quality assessment shows essentially the same status, except total phosphorus is now listed as an aquatic-life parameter for the downstream assessment unit. The proposed parameter category for phosphorus is 3-PAS (insufficient information but potentially attaining standard).

According to NHDES, water quality data is not considered current after five years. The 2011 data is the most recent data for the reaches of interest. NHDES recommends collecting additional samples to enable it to reaffirm that the Project is compliant with water quality standards. NHDES supports certifying the Project conditional upon completion of a sampling study next summer. (see appended emails from NHDES)

With the current higher bypass-flow requirement, a larger volume of highly oxygenated water is discharged to the Pemigewasset River, which may be beneficial to that river's water quality.

Conclusion: The Water Quality Standard B-3 (Site-Specific Studies) is met in both zones based on the 2011 sampling study if subject to the following recommended condition to reaffirm compliance with water quality standards:

The Owner shall complete a water quality sampling study during summer 2018 under a study plan approved in advance by the New Hampshire Department of Environmental Services (NHDES). The study plan shall be filed with NHDES no later than October 1, 2017. A copy of the final study plan shall be filed with LIHI within 30 days of NHDES approval. The data and study report shall be filed with NHDES and LIHI by December 31, 2018. If the Newfound Project is determined to be causing, or contributing to, substandard water quality, a remediation proposal, including an implementation schedule, shall be developed in consultation with NHDES and filed with LIHI by April 1, 2019. Otherwise, the Owner shall file review comments/recommendations from NHDES by the same date. LIHI may suspend certification or further condition the certification based on the study findings or recommendations of NHDES.

Criterion C - Upstream Fish Passage

Goal: The facility allows for the safe, timely, and effective upstream passage of migratory fish. This criterion is intended to ensure that migratory species can successfully complete their life cycles and maintain healthy, sustainable fish and wildlife resources in areas affected by the facility.

Review: Based on the earlier certification review, there is an absence of historical evidence of use by anadromous fish that are currently the subject of restoration efforts in the Merrimack River basin, and catadromous American eel have not been documented as present upstream of the Project dam. While the federal and state resource agencies have neither requested nor prescribed fish passage facilities at the Project, they continue to recommend that LIHI certify the Project contingent on such facilities being provided upon a resource agency request.³ This is more likely to occur for American eel than for anadromous species, as there is no present intent to restore or introduce such species in the Newfound River basin.

Conclusion: I suggest that the Project be considered to meet, in both zones, the Upstream Fish Passage Standard C-1 (Not Applicable/De Minimis Effect) as there is neither a documented need for fish passage at this time nor a recommendation for such by interested resource agencies. However, circumstances could change during the term of the certification. Therefore, I recommend the certification be made conditional on the following:

In the event that within the 5-year term of the certification, a fisheries agency requests or prescribes upstream or downstream fish passage at the Project, the Owner shall notify LIHI within 30 days of such action and the steps that the Owner is prepared to take to install appropriate passage at the Project dam. In the event that the Owner notifies LIHI that it does not intend to install appropriate passage, or that the Owner cannot reach an agreement with the resource agency, or agencies, as to the nature of this passage, LIHI

³ The application includes emails from the USFWS (August 17, 2016) and NHDFG (April 28, 2017) supporting recertification conditional on installation of eel passage facilities should an agency request be made.

reserves the right to withdraw its certification should LIHI determine that the Owner's position is inconsistent with the LIHI fish passage criteria at that time.

Criterion D - Downstream Fish Passage and Protection

Goal: The facility allows for the safe, timely, and effective downstream passage of migratory fish. For riverine (resident) fish, the facility minimizes loss of fish from reservoirs and upstream river reaches affected by Facility operations. All migratory species are able to successfully complete their life cycles and to maintain healthy, sustainable fish and wildlife resources in the areas affected by the Facility.

Review: See discussion above on upstream passage.

Conclusion: The Downstream Fish Passage Standard D-1 (Not Applicable/De Minimis Effect) is met in both zones based on the same reasoning applicable to upstream passage and subject to the same condition:

In the event that within the 5-year term of the certification, a fisheries agency requests or prescribes upstream or downstream fish passage at the Project, the Owner shall notify LIHI within 30 days of such action and the steps that the Owner is prepared to take to install appropriate passage at the Project dam. In the event that the Owner notifies LIHI that it does not intend to install appropriate passage, or that the Owner cannot reach an agreement with the resource agency, or agencies, as to the nature of this passage, LIHI reserves the right to withdraw its certification should LIHI determine that the Owner's position is inconsistent with the LIHI fish passage criteria at that time.

Criterion E – Shoreline and Watershed Protection

Goal: The Facility has demonstrated that sufficient action has been taken to protect, mitigate and enhance the condition of soils, vegetation and ecosystem functions on shoreline and watershed lands associated with the facility.

Review: As noted in the original certification report, the shorelands associated with the impoundment are extremely limited due to the short extent of backwater, and it is in a highly developed urban area. The bypassed reach, although more buffered from development, has not been shown to have significant ecosystem functions. There are no shoreland management plans required under the license.

Conclusion: The Shoreline and Watershed Protection Standard E-1 (Not Applicable/De Minimis Effect) is met in both zones. There are no lands associated with the facility under the ownership and control of the Applicant that are subject to a shoreline management plan or similar protection, and the lands within the Project boundary are not known to have significant ecosystem functions or recreational use.

Criterion F - Threatened and Endangered Species Protection

Goal: The Facility does not negatively impact listed species.

Review: Based on a recent review of the New Hampshire Natural Heritage Bureau database (June 7, 2016, see Appendix F of the application), there are no threatened or endangered species located in the Newfound Project area. The same findings were made during the prior review in 2011.

Conclusion: The Threatened and Endangered Species Protection Standard F-1 (Not Applicable/De Minimis Effect) is met in both zones. There are no listed species present in the facility area or downstream reach, and there is no evidence that the facility was responsible for the extirpation of any listed species that may have been present historically.

Criterion G - Cultural and Historic Resource Protection

Goal: The Facility does not inappropriately impact cultural or historic resources that are associated with the Facility's lands and waters, including resources important to local indigenous populations, such as Native Americans.

Review: According to the original reviewer report, Article 19 of the license addresses general cultural resource protection, and the New Hampshire Division of Historic Resources had commented that the Project does not present a risk since no activities outside of normal operation are planned. Under Article 19, if, during the construction of project works or other facilities, unrecorded archeological or historical sites are discovered, a mitigation plan must be developed in consultation with the State Historic Preservation Office. The recertification application states: "There have been no changes to the operation of the Newfound Project nor have there been any construction projects that would involve cultural or historic resources since the previous LIHI certification of the Newfound Project. Additionally no such changes are proposed for the future." No historic buildings are associated with the Project.

Conclusion: The Cultural and Historic Resource Protection Standard G-1 (Not Applicable/De Minimis Effect) is met as no operational changes or construction are planned, and cultural resources are protected under Article 19 of the license.

Criterion H - Recreational Resources

Goal: The facility accommodates recreation activities on lands and waters controlled by the facility and provides recreational access to its associated lands and waters without fee or charge.

Review: While the Project is not subject to a recreation plan and does not provide recreational facilities on site, the Applicant does allow open access to the lands for public use (see appended email from the Applicant, August 15, 2017)

Conclusion: The Recreational Resources Standard H-3 (Assured Accessibility) is met as the Applicant allows free and open public access to the Project lands for recreational use.

APPENDIX

From: Susan Giansante [mailto:susan.giansante@eaglecreekre.com]
Sent: Thursday, May 04, 2017 11:37 AM
To: Mike Sale <mjsale@lowimpacthydro.org>
Cc: Jeffrey Cueto <ompompanoo@aol.com>; Bob Gates <bob.gates@eaglecreekre.com>
Subject: RE: Newfound Project LIHI Recertification

Thanks Mike-

I did include Jeff on the original e-mail forwarding NHFG comments, but I will forward it to him separately as part of the final transmittal with the revised application addressing Jeff's comments.

Regarding the following:

- 12.7 cfs bypass flow. Looking back at the active LIHI conditions, as you mention, in particular Condition 2 (below), it appears that John was not responsive in the original application. As you note in your e-mail, I did have a conversation with John Warner regarding the current 12.7 cfs released in the bypass that was agreed to in the field during the original certification. John stated that he has no intention of revisiting the site as the current flow is acceptable.

I did include an e-mail in the original recertification application, attached, which confirms USFWS support of LIHI certification with the continuation of 12.7 cfs in the bypass. Is this sufficient?

Condition 2. KTZ Hydro LLC shall increase the bypass minimum flow to a provisional 12.7 cfs immediately and shall notify LIHI within 7 days of taking such action. KTZ Hydro LLC will also conduct appropriate analysis and finalize a minimum flow in consultation and upon agreement with the U.S. Fish and Wildlife Service and provide the results to LIHI by no later than October 1, 2012, including written concurrence from the U.S. Fish and Wildlife Service.

Status: According to their 4/26/12 letter, KTZ Hydro increased the flow in the bypassed reach of river to a provisional 12.7 cfs within 7 days of LIHI certification. They also reached out to John Warner several times, asking him to visit the site and for his approval, they sent him pictures as well. According to Bob King's email of 1/21/14 John had told him on the 2017 Annual and Active Condition Fee Detail - Newfound - LIHI Certificate No. 82 page 2 phone that he thought everyone agreed to 12.7 cfs, after which Bob told John that LIHI wants something more definitive. Bob asked LIHI in this 1/21/14 email if "LIHI could recognize USF&W's tacit approval as evidenced by their lack of response despite multiple calls and emails." **No further action required.**

- Ecological flow regime for the tailrace zone. To address Jeff's comments (below), I sent an e-mail to John requesting his input on Jeff's comments. In follow up to the e-mail, as part of the same phone call with John noted above, John indicated he has no concerns with current the ecological flow regime in the short stretch of the tailrace zone which backwaters from the Pemigewasset River.

For the criterion of Ecological Flow Regime in the tailrace zone:

Since the only flow through this zone is turbine leakage when the station is off line, it would be helpful to have documentation from the USFWS or NHDFG that this is not a concern. This seems unlikely to be an issue as the tailrace is backwatered from the river and only 175 feet long, but there are no resource agency comments to support this.

Based on my conversation with John Warner, I don't expect that we will get any further written responses from him. When I spoke with John, his recommendation was for me to send an e-mail to you confirming my discussions with him, and from his perspective, LIHI could call him to discuss or confirm his statements.

From: Mike Sale [<mailto:mjsale@lowimpacthydro.org>]
Sent: Wednesday, May 3, 2017 4:58 PM
To: Susan Giansante <susan.giansante@eaglecreekre.com>
Cc: Jeffrey Cueto <ompompanoo@aol.com>; 'Mike Sale' <mjsale@lowimpacthydro.org>
Subject: RE: Newfound Project LIHI Recertification

Hi, Sue. Back from the NHA week in Washington here. The message you received from Carol Henderson is acceptable for the purposes of getting comments from that state agency. You can use it as is and send it to Jeff separately, rather than revise your whole application. He will include it in his reviewer report. I have to note that Carol's comment is a bit circular, as it confirms John's position and the FWS position relies on recommendations from you, as well as FWS. Regardless, we will get that sorted out.

One other issue that we discussed when I talked with you and Bob Gates was the finalization of the minimum flow. My memory is that Bob related an interaction with John Warner where John said something like he had been out to the site to set that 12.7 cfs minimum flow once and he didn't intend to do that again. If I got that right, I thought Bob was going to try to find some documentation for that interaction. I ask because there was a condition on the previous LIHI certificate that required some kind of confirmation of the 12.7 cfs interim flow – this still needs to be resolved. Please let me and Jeff know what you intend to do on that.
~mjs

From: Susan Giansante [<mailto:susan.giansante@eaglecreekre.com>]
Sent: Monday, May 01, 2017 2:25 PM
To: Mike Sale <mjsale@lowimpacthydro.org>; Jeffrey Cueto <ompompanoo@aol.com>
Cc: Bob Gates <bob.gates@eaglecreekre.com>
Subject: FW: Newfound Project LIHI Recertification

Mike and Jeff-

Please confirm that the following e-mail from NH Fish and Game is acceptable for our recertification.

Upon your confirmation, we will include the attached in our revised application.

Thanks
Sue

SUSAN GIANANTE
PROJECT MANAGER
EAGLE CREEK RENEWABLE ENERGY, LLC
Mobile: 860-620-4527
E-MAIL: SUSAN.GIANANTE@EAGLECREEKRE.COM

From: Henderson, Carol [<mailto:Carol.Henderson@wildlife.nh.gov>]
Sent: Friday, April 28, 2017 2:23 PM
To: Susan Giansante <susan.giansante@eaglecreekre.com>
Subject: RE: Newfound Project LIHI Recertification

Hi Susan:

I apologize for not returning a response on official Department letterhead paper but I did not have your address and I suspected that you wanted the response as soon as possible. If you would prefer a response on Department letterhead, please let me know and I will be able to produce quickly.

The NH Fish and Game Department (NHFGD) agrees with the recommendations outlined by the US Fish and Wildlife Service (USFWS) noted in John Warners' email dated August 17, 2016 (copied to the Department), relative that "the Low Impact Hydro Certification for the Newfound River project should be contingent upon an agreement by the licensee to continue to provide 12.7 minimum bypass flow and agree to provide both upstream and downstream American eel passage in a timely manner if passage is found to be necessary by the USFWS and NHFGD. I hope this information has been helpful. If you need any additional information, please do not hesitate to contact me at 603-271-3511 or via email. Thank you, Carol Henderson, NH Fish and Game Department, Environmental Review Coordinator

From: John.Warner@fws.gov [<mailto:John.Warner@fws.gov>]
Sent: Tuesday, October 25, 2011 8:57 AM
To: Stephen Hickey
Cc: Bob King; John A Magee
Subject: Re: Newfound bypass flow follow up

Steve,

Based on our discussion yesterday and review of the information below, we have the following recommendations for LIHI Certification of Newfound Hydro.

We can support the Newfound Hydroelectric Project's application for certification by the Low Impact Hydropower Institute if the project owner agrees to the release of a minimum flow of 12.7cfs into the bypass reach. While the exact flow we identified in the field on October 6, 2011 as being acceptable is uncertain, the best approximation of that flow is 12.7 cfs and that discharge should be the target minimum flow. This bypass flow would be passed through a notch in the project flashboards close to the project's trash racks. We will want to review the flow in the field (likely next summer) to verify that the calculated flow achieves the habitat conditions we observed in the field and found acceptable. Newfound Hydro would need to coordinate with me and NHFGD to schedule the observations when river flows are appropriate. Adjustment of flows for observations may be needed to verify that the 12.7 cfs flow is adequate or some other flow is needed. Once a final flow is verified, it may be appropriate to install a staff gage in the lower bypass to permit verification of compliance with the correct flow. We can discuss this further at the time of the flow demonstration but would like Newfound to commit to installing a gage if its determined to be needed.

I believe that John Magee at New Hampshire Fish and Game is in agreement with the above.

Thanks - JW

John P. Warner
Assistant Supervisor, Conservation Planning Assistance and Endangered Species
New England Field Office, U.S. Fish and Wildlife Service



Via Electronic Filing

March 4, 2016

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

**RE: Eagle Creek Renewable Energy (ECRE)
Minimum Flow Compliance - 2015**

Project:

Beaver Falls Upper FERC No. P-2593-NY
Beaver Falls Lower FERC No. P-2823-NY
Phoenix FERC No. P-4113-NY
Newport FERC No. P-5196-NY
Great Falls FERC No. P-2814-NH
Clement FERC No. P-2966-NH
Gregg's Falls FERC No. P-3180-NH
Lakeport FERC No. P-6440-NH
Lochmere FERC No. P-3128-NH
Mine Falls FERC No. P-3442-NH
Newfound FERC No. P-3107-NH
Stevens Mill FERC No. P-3760-NH
Webster-Pembroke FERC No. P-3185-NH

Licensee:

Algonquin Power (Beaver Falls)
Algonquin Power (Beaver Falls)
Oswego Hydro Partners
Newport Hydro Associates
Great Falls Hydro
Clement Dam Hydroelectric
Hydro Associates
Lakeport Hydro Corporation
HD1 Associates I Partnership
Mine Falls Limited Partnership
KTZ, Hydro
Franklin Power
Pembroke Hydro Associates

Dear Secretary:

On behalf of the Licensee, Eagle Creek Renewable Energy is hereby submitting notice of minimum flow compliance for the projects listed above.

2015 Minimum Flow Verification – Operating personnel have reported and verified the minimum flow was maintained at all times from January 1, 2015 to December 31, 2015 for all projects listed above.

The Commission issued a letter to the previous license holder (Algonquin Power) dated April 9, 2013 acknowledging the receipt of the annual compliance report and determined that there is no license requirement for these annual statements to be filed with the Commission and the practice can be discontinued.

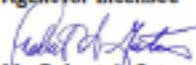
The licensee respectfully requests confirmation from the Commission that the annual compliance report is not a license requirement for the projects listed above. If the annual compliance report is indeed not an annual requirement, the licensee requests the annual verification to be discontinued.

Eagle Creek Renewable Energy
Midwest Operations
116 North State Street, PO Box 167
Nashboro, WI 54960-0167 USA
www.eaglecreekre.com



In the event of a deviation from one or more of the license requirements, the licensee will file a report with the Commission within 30 days of when the deviation is reported.

Should you have any questions regarding this matter please do not hesitate to contact Ms. Melissa Rondou in the Eagle Creek Renewable Energy offices by telephone at (920)293-4628 - Ext. 347 or e-mail at melissa.rondou@eaglecreekre.com.

Sincerely,
Eagle Creek Renewable Energy
Agent for Licensee

Mr. Robert A. Gates
Executive Vice President of Operations

CC: Ken Kemp, CDSO
Mark Sherbino, OPS
16-03-04_ECRE_NNY-NH_Minimum Flow Verification

Eagle Creek Renewable Energy
Midwest Operations
116 North State Street, PO Box 167
Neshkoro, WI 54960-0167 USA
www.eaglecreekre.com

☆ Ted Walsh 

August 10, 2017 at 8:35 AM

TW

RE: Newfound Project - LIHI recertification
To: Jeffrey Cueto

Jeff,
Every other recertification NHDES has been asked to review has included the monitoring requirements. For our 305(b) water quality assessments data ages out after five years which matches up nicely with the LIHI certification cycle. We would be fine with recertifying them now and requiring the monitoring next year.

Ted

[See More from Jeffrey Cueto](#)

☆ Jeffrey Cueto

August 9, 2017 at 8:40 PM



Re: Newfound Project - LIHI recertification
To: Ted Walsh

Thanks for the quick response, Ted. I'm checking with LIHI to see what they'd like to do. Perhaps the project could be recertified with a condition to do sampling during the 2018 field season. Is there any new information for the Newfound River that raises concerns for you or is this just normal protocol?
Best,
Jeff

[See More from Ted Walsh](#)

Ted Walsh 

August 9, 2017 at 3:16 PM


TW

RE: Newfound Project - LIHI recertification
To: Jeffrey Cueto

Jeff,
We have required other project to collect the same water quality for recertification as they did for certification. We would want to issue a letter to the owner of the facility outlining the monitoring requirements. Do you contact information I could use?

Ted

[See More from Jeffrey Cueto](#)

Jeffrey Cueto 

August 9, 2017 at 11:29 AM



Newfound Project - LIHI recertification
To: Ted Walsh

Hi, Ted. I had reviewed this project for LIHI certification back in 2011, and it is back now for recertification. In 2011, the owner had done some water quality sampling to aid you in determining that the facility was operating in compliance with NH water quality standards. Your review letter is attached. I just want to confirm whether there is any new data or any changes to the standards that would change your determination that the facility is in compliance. I understand that the fisheries agencies are still deferring fish passage. Further, the owner has developed a flow monitoring plan to assure true run-of-river operation and release of 12.7 cfs minimum flow into the bypassed reach.

Best regards,
Jeff Cueto



B Appendix to
Newfo...lity.pdf

☆ **Susan Giansante** 

August 15, 2017 at 9:07 AM



RE: Newfound Project LIHI review

To: Jeffrey Cueto

Good morning Jeff-
Yes, there is open public access to the bypassed reach.
Sue

[See More from Jeffrey Cueto](#)

Found in Sent - AOL Mailbox



Jeffrey Cueto

9:40 AM



Re: Newfound Project LIHI review

To: Susan Giansante

Thanks, Sue. I'm hoping to wrap up my report this week.
Jeff

[See More from Susan Giansante](#)

Found in Sent - AOL Mailbox



☆ **Jeffrey Cueto**

August 9, 2017 at 10:44 AM



Newfound Project LIHI review

To: Susan Giansante

Hi, Susan. I'm working on the reviewer report and have a question for you. Please clarify whether there is open public access to the bypassed reach for uses such as angling. That was my understanding when I did the review in 2011. The new criteria for recreation refers to an access request from a public interest group, but I'd expect that the owner probably allows access without there having been an access request from a public interest group.
Thanks.
Jeff