



**Sappi  
North America**

November 17, 2017

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**RE: Response to Comments Submitted by CLF and FOPR**

Dear Low Impact Hydropower Institute,

S.D. Warren Company d/b/a Sappi North America (Sappi) is hereby submitting this response to public comments submitted on our LIHI application by the Conservation Law Foundation (CLF) and Friends of the Presumpscot River (FOPR). These organizations made three general points that we would like to address:

***Argument #1 – The fish passage facilities have not yet been installed, so the Sappi hydropower facilities are currently having a detrimental impact on fish passage.***

CLF and FOPR’s primary argument is that the facility cannot have a low ecological impact because the installation of fish passage has not yet occurred. However, this narrow interpretation does not reflect an accurate understanding of the LIHI handbook, criteria, or process.

As stated in the LIHI 2nd Edition Handbook, one of the primary purposes of LIHI is to “provide positive recognition and economic reinforcement to hydropower owners who take steps to improve their facilities and invest in the local environment.” Many hydroelectric facilities have received LIHI certification because they have demonstrated firm commitments and are on a path toward reducing environmental impacts through capital investments and operational improvements. In fact, LIHI often provides the initial incentive for facilities to undertake those improvements in the first place, whether or not they are required by a regulatory proceeding. This is a critical role to fill in the hydropower industry, and LIHI certification provides that incentive to reduce the environmental impacts of hydropower generation, in accordance with LIHI’s mission. Requiring each facility to pass certification only after the facility has successfully installed and demonstrated each environmental improvement to the satisfaction of every party involved would be onerous, and ignores the timelines that are necessary to license improvements, make capital budgeting decisions, and install equipment.

This precedent has been set in many, if not most, LIHI-certified facilities. As just a few examples (there are many more):

- LIHI #66, Orono, and LIHI #67, Stillwater: “This certification review is based on the presumption that the final transfer of the Great Works, Veazie and Howland Projects will occur, and the fish passage protection provisions associated with that option of the Settlement Agreement will be implemented. Should the transfer not take place, and if LIHI certification is still desired, then reanalysis of the Orono Project against LIHI certification criteria, incorporating these alternative fish passage provisions must be requested / performed.”
- LIHI Certificate #11, Pawtucket: “The owner of the Pawtucket hydropower facility shall continue to participate in efforts to restore fish passage in the lower Blackstone River, as documented in Memoranda of Agreement of 2007 (amended 2009) and 2012 with RIDEM. The owner shall keep LIHI fully informed of all progress, delays, and changes in these efforts and agreements. LIHI certification is contingent on the owner continuing to play a strongly supportive and proactive role in achieving the goals of the Blackstone River Fish Passage Restoration Project, subject to cooperation, material progress, and the appropriation of project funding from state and federal agencies.”
- LIHI Certificate #12, Tallassee Shoals: “There are active and evolving efforts to restore migratory fish populations in the Oconee River basin that may eventually interact with the facility at some point in the future. Therefore, the owner shall monitor the progress of these efforts on a regular and continuing basis, and participate in them when appropriate.
- LIHI Certificate #89, Holyoke Hydro: “If HG&E does not meet any of the downstream fish passage design and implementation deadlines that fall within the 5-year term of certification, LIHI will suspend certification unless HG&E demonstrates to LIHI that the resource agencies believe good cause exists for the schedule delay. Any subsequent re-certifications of the Facility will be dependent on HG&E’s passage facilities meeting effectiveness targets set by the agencies.”
- LIHI #110, Stillwater B: “The facility owner shall consult with the involved fisheries resource agencies and the Penobscot Indian Nation (PIN) to confirm that the designs that have been implemented at the new downstream fish and eel passages are consistent with the Settlement Agreement. An annual status report on such consultation, plans and results from effectiveness testing of fishways, and final acceptance by agencies and PIN shall be sent to LIHI along with the owner’s annual compliance letter.”

- LIHI #128, North Gorham: “Within 90 days of LIHI certification, the Owner shall proactively initiate discussions with MDMR and USFWS regarding future construction of an upstream fish passage facility for American eel at the site and implementation of appropriate measures to facilitate safe downstream passage for American eel. The siting and design work on the upstream passage structures shall be initiated within the first two years of LIHI certification; construction and operation shall be completed as soon as practicable, but no later than the end of the five-year LIHI certification period.”

In Sappi’s case, there is a clear timetable and biological triggers in place to install fish passage. This timeline has been agreed to in a Settlement Agreement (S.A.), between Sappi, U.S. Fish and Wildlife Service, Maine Department of Marine Resources, Conservation Law Foundation, Friends of the Presumpscot River, and the City of Westbrook. Sappi will be making significant capital investments to remove Saccarappa Dam and make site alterations to improve fish passage, in excess of \$5 million when design cost are included. All parties to the S.A. concurred with this approach, as evidenced in the S.A. and letters supporting LIHI certification from the various resource agencies. According to the Fish and Wildlife Service (letter dated May 31, 2017):

*“Warren, the Service, and other Stakeholders have worked tirelessly to negotiate the terms of a Settlement Agreement (Agreement) affecting fish passage at four of the Projects noted herein. We are now implementing this Agreement. The Agreement addresses issues of concern to the Stakeholders, gives Warren some certainty regarding the requirements for decommissioning and removal of the Saccarappa Project, and extends the time when Warren must comply with fish passage requirements at the other four Projects. S.D. Warren Company has been very cooperative with the Service regarding issues and concerns relating to these projects and we support their application for certification.”*

***Argument #2 – Dam removal recommendation eliminates eligibility.***

CLF and FOPR contend that Sappi’s projects are ineligible because of various comments made during re-licensing recommending that dam removal be considered as an alternative to continued operations of the project. This comment is faulty on two grounds:

1. ***Dam removal was recommended to be considered as an alternative in FERC’s NEPA process – this does not qualify as a recommendation for removal:*** Several agencies requested that FERC consider dam removal as an *alternative*, and removal was never a final recommendation from any resource agency, which instead opted for fish passage facilities. The language from the FEIS reads: “Interior, the state of Maine resource agencies, American Rivers/FOPR, MCASF/Friends of Sebago Lake, and TU all filed comments and recommended that the Commission consider removal of three dams as an alternative to licensing” (page 55). At the time of re-licensing, these facilities did not have any passage installed or plans to do so. Fish passage installation was also recommended as an alternative (in addition to dam removal). The final recommendations from

the agencies (USFWS, MDIFW, MDEP, etc.) almost exclusively focused on installing upstream and downstream passage. The FEIS offers a summary of the final recommendations by all agencies, on pages 21-25. For example:

- a. “The MDMR is the lead state agency in the restoration and management of diadromous (anadromous and catadromous) species of fish other than sea-run Atlantic salmon. **The MDMR recommends** installation of upstream and downstream fish passage facilities for American shad and blueback herring at the lower four projects, including screens on the trashracks and separate upstream and downstream measures (shut downs) for eels at each of the five projects.”
- b. “The Maine Atlantic Salmon Commission (MASC) is responsible for the restoration of Atlantic salmon throughout its historical range in the state of Maine. However, the recent events that prompted the request for dam removal (see section 2.2.2) also have caused the MASC to re-evaluate its priorities for restoration of Atlantic salmon in the Presumpscot River<sup>1</sup>. **The MASC recommends** a reopener clause to address the need for upstream and downstream passage facilities for diadromous fish once the Cumberland Mills dam has fish passage facilities; consultation with S.D. Warren every 3 years to develop a schedule for installation of fish passage facilities; and a study to determine appropriate flows to support Atlantic salmon, after MASC has completed its assessment of the river habitat.”
- c. “**Interior also recommends** installing upstream and downstream fish passage facilities for American shad and blueback herring, and separate measures for eel passage.”
- d. “**The FWS recommends** ROR operation, year-round minimum flows, a headpond elevation and flow monitoring plan, the development of a detailed Shoreline Management Plan (SMP) for licensee-owned lands that are needed to project-related purposes within 500 feet of the high water elevation, and recreational use monitoring every 6 years.”

LIHI requires that resource agencies conclusively recommend a dam for removal, not that dam removal is considered as an alternative or that dam removal was considered as an option at some point in the re-licensing proceeding. Recommendations by agencies frequently change during the course of the re-licensing, and did in this case as well, to favor installation of passage facilities. For example, the Shoreline Management Plan originally recommended by USFWS is now a Land Use Recreation Management Plan. The NGOs that commented did recommend removal, but this is not relevant for LIHI criteria, which requires the recommendation to come from resource agencies.

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<sup>1</sup> This recommendation was made by NGOs, not a resource agency. See page 21: “Several NGO's, including the Friends of the Presumpscot River (FOPR), Friends of Sebago Lake, and the Maine Council of the Atlantic Salmon Federation (MCASF), as well as numerous individuals are advocating that the Commission order the removal of the Little Falls, Mallison Falls, and Saccarappa dams.” These do not qualify under LIHI standards because, under those standards, recommendations must come from the resource agencies.

2. ***The Agencies' final recommendations are contained in the Settlement Agreement.*** LIHI's criteria states (pg. 42): "If a single Resource Agency has made multiple recommendations, the most recent recommendation shall apply. This principle also applies when there is a settlement. If a Resource Agency is party to a settlement, or otherwise formally concurs in a settlement, the settlement terms are considered to be the most recent Resource Agency Recommendation for these purposes. If, however, a Resource Agency is not party to a settlement and does not formally concur in the settlement, the most recent recommendation of that Resource Agency, and not the settlement terms, apply for purposes of certification."

This is a clear example where the qualifying agency recommendations are contained in the S.A. The timeline and biological triggers for installation of passage at each project has been agreed to in the S.A. by Sappi, U.S. Fish and Wildlife Service, Maine Department of Marine Resources, Conservation Law Foundation, Friends of the Presumpscot River, and the City of Westbrook. Each resource agency party to the S.A. were those that recommended FERC consider dam removal as an alternative during the NEPA process in 2003. The S.A. represents years of study, design and consultation into providing fish passage at the Saccarappa Project and goes far beyond the requirements of the Projects' Section 18 Fishway Prescription in the License, or of a typical decommissioning / license surrender order.

***Argument #3 – Certification should wait until the project has proven it is having a low impact to fish.***

This is a restatement of Argument #1, and our response is above.

In his December 27, 2016 letter to the MDEP supporting a "Minor Revision" to the Projects' Water Quality Certification (attached), Sean Mahoney, writing on behalf of CLF and FOPR, states:

"For more than three years, the parties to the SA negotiated to reach an agreement that would be the best possible result for water quality of the Presumpscot River. The effort required an enormous investment of resources, in terms of time and money, and at the end of the day each of the parties believes that the SA reached will be to the benefit of the Presumpscot River, the communities that share it and the company that uses it to continue its operations."

This statement undercuts CLF's and FOPR's objections here, showing that CLF and FOPR clearly believe the SA will benefit the Presumpscot River by offering the "best possible result for water quality of the Presumpscot River."

If you have any questions concerning this matter, please contact me at 207-856-4083 or by e-mail at [Brad.Goulet@SAPPI.com](mailto:Brad.Goulet@SAPPI.com).

Sincerely,



Brad Goulet  
Hydro Manager/Utilities Engineer

Attachment:  
December 27, 2016 CLF letter to MDEP

cc: Peter Drown Cleantech  
Matt Manahan P.A.  
Briana O'Regan Sappi