

APPENDIX C

Relevant Agency Comments

Flows

There are no changes in the flow regime at the Bowersock Dam as a result of the BMPC Expansion. In the initial project certification, the Kansas Department of Agriculture noted that “the facility has no effective control over flow conditions. Please see the attached email from Scott Satterthwaite of the Kansas Department of Health and Environment which confirms that the Department has received and reviewed the “Flows Section of the BMPC LIHI Application and confirms that the department concurs with all BMPC answers.

Water Quality

See attached email from Scott Satterthwaite of the Kansas Department of Health and Environment which notes that the Kansas River in the region of the Bowersock Dam is on the 303 DList, but confirms that the BMPC Project has not been implicated as a source of the impairment.

Fish Passage

See attached letters from Vernon Tabor of the US Fish and Wildlife Service, and Jason Luginbill of the Kansas Department of Wildlife, Parks, and Tourism, both of which provide agency comments on the need to avoid adding fish passage at the site as well as other relevant comments relating to any other resource agency recommendations.

FERC License Requirements

See attached project FERC License P-13526 for all FERC Project License Compliance Requirements.

From: Scott Satterthwaite [ssatterthwaite@kdheks.gov]
Sent: Wednesday, October 01, 2014 3:15 PM
To: Sarah Hill-Nelson
Cc: Don Carlson; Tom Stiles
Subject: RE: Low Impact Hydropower Certification

Sarah, you also. We have reviewed your questions and concur with your answers. For clarification, the segment of the KS River is on the 303 dlist however, the facility has not been implicated as a source of the impairment. Your key contacts should be as follows:

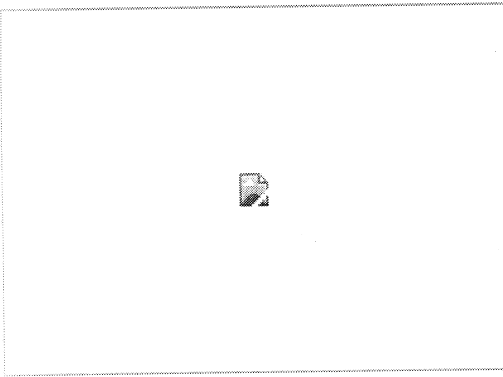
Water quality standards questions-
Mr. Tom Stiles, Chief
Kansas Department of Health and Environment
Bureau of Water
Watershed Planning, Monitoring, and Assessment Section
1000 SW Jackson St., Suite 420
Topeka, KS 66612-1367
(785) 296-6170
FAX: (785) 296-5509
tstiles@kdheks.gov

For NPDES permitting questions-
Mr. Don Carlson, Chief
Kansas Department of Health and Environment
Bureau of Water
Industrial Programs Section
1000 SW Jackson St., Suite 420
Topeka, KS 66612-1367
(785) 296-5547
FAX: (785) 296-5509
DCarlson@kdheks.gov

Thanks,

Scott

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Scott L. Satterthwaite
Kansas Department of Health and Environment
Bureau of Water, Watershed Management Section
1000 S.W. Jackson St., Suite 420
Topeka, KS 66612-1367
Phone (785) 296-5573
FAX (785) 296-5509
ssatterthwaite@kdheks.gov
Check out our web site! www.kdheks.gov/nps



From: Sarah Hill-Nelson [<mailto:shn@bowersockpower.com>]
Sent: Sunday, September 28, 2014 5:28 PM
To: Scott Satterthwaite
Subject: Low Impact Hydropower Certification

Hi Scott,

It is Sarah Hill-Nelson writing from Bowersock. I hope you are well. We are in the process of applying for re-certification as a Low-Impact Hydropower Plant, and I am filling out a questionnaire.

Can you possibly review the following questions and my answers and advise if they are correct or need revision?

A. Flows	PASS	FAIL
1) Is the Facility in Compliance with Resource Agency Recommendations issued after December 31, 1986 regarding flow conditions for fish and wildlife protection, mitigation and enhancement (including in-stream flows, ramping and peaking rate conditions, and seasonal and episodic instream flow variations) for both the reach below the tailrace and all bypassed reaches?	YES = Pass, Go to B N/A = Go to A2 As a run-of-river facility, BMPC is required to pass flows as they reach the Bowersock Dam, but has not been issued any conditions in addition to passing existing flows.	NO = Fail
2) If there is no flow condition recommended by any Resource Agency for the Facility, or if the recommendation was issued prior to January 1, 1987, is the Facility in Compliance with a flow release schedule, both below the tailrace and in all bypassed reaches, that at a minimum meets Aquatic Base Flow standards or "good" habitat flow standards calculated using the Montana-Tennant method?	YES = Pass, go to B NO = Go to A3 N/A	The State of Kansas has established minimum desirable streamflow targets for the Kansas River with standards other than the Montana-Tennant method. As a run-of-river operation, the BMPC project passes all flows that reach the Bowersock Dam as managed by the Kansas Agencies of Health and Environment, Agriculture, and the USACE, all of which determine flows in the

		Kansas River. The exception to this is millpond refills which are conducted in full collaboration with all stakeholders.
3) If the Facility is unable to meet the flow standards in A.2., has the Applicant demonstrated, and obtained a letter from the relevant Resource Agency confirming that demonstration, that the flow conditions at the Facility are appropriately protective of fish, wildlife, and water quality?	YES = Pass, go to B	NO = Fail
B. Water Quality	PASS	FAIL
1) Is the Facility either: a) In Compliance with all conditions issued pursuant to a Clean Water Act Section 401 water quality certification issued for the Facility after December 31, 1986? Or b) In Compliance with the quantitative water quality standards established by the state that support designated uses pursuant to the federal Clean Water Act in the Facility area and in the downstream reach?	YES = Go to B2	NO = Fail
2) Is the Facility area or the downstream reach currently identified by the state as not meeting water quality standards (including narrative and numeric criteria and designated uses) pursuant to Section 303(d) of the Clean Water Act?	YES = Go to B3 NO = Pass	
3) If the answer to question B.2 is yes, has there been a determination that the Facility does not cause, or contribute to, the violation?	YES = Pass	NO = Fail

Thanks for your assistance! I may need reach out to you on some other questions. In addition, I am requested to name key contact people for the various state and federal agencies that regulate Bowersock. May I use you as the primary contact person for KDHE? Are there others I should include?

Please advise.

Thanks in advance.

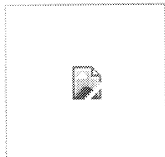
Sincerely,

Sarah

The Bowersock Mills and Power Company
P.O. Box 66
500 South Powerhouse Road

Lawrence, Kansas 66044
Office/Mobile: 785-766-0884
Plant/Fax: 785-843-1385
shn@bowersockpower.com
www.bowersockpower.com

"Producing clean, renewable hydropower since 1874."



Robin Jennison, Secretary

Sam Brownback, Governor

March 9, 2015

Sarah Hill-Nelson
P.O. Box 66
Lawrence, KS 66044

RE: Low Impact Hydropower Institute (LIHI) Recertification of Bowersock Mills & Power Company (BMPC)

Dear Ms. Hill-Nelson:

After careful review of the proposed draft, BMPC Expanded Kansas River Hydropower Project – Project Operations Monitoring Plan –Rubber Dam Revision, the Kansas Department of Wildlife, Parks and Tourism has the following comments:

- **Communication to Relevant Agencies:** *”communicate significant anticipated or unplanned changes of 6 inches or more from the authorized millpond level of 813.5”*

Pursuant the *Kansas Nongame and Endangered Species Conservation Act* of 1975, KDWP has regulatory authority over several aquatic species in the Kansas River and request that the department be added to the list of agencies to contact when Article 401 conditions change and for the BMPC Millpond Refill procedures.

After careful review of the proposed responses to the LIHI questionnaire, the Kansas Department of Wildlife, Parks and Tourism has the following comments:

- **Section C., Number 5bii, Fish Passage and Protection:** BMPC is committed to the installation of fish passage as part of the LIHI license; however, at this time there is consensus within our natural resource agency that an aquatic organism passage structure could increase potential impacts to upstream systems and is discouraged because the dam currently operates as an impediment to the spread of aquatic non-native species. Future research may reveal that the movement and impacts of non-natives upstream of BMPC do not pose threats to native organisms and systems and at this time, discussions would engage to provide passage to facilitate upstream movement of all aquatic organisms.

After careful review of the proposed responses to the LIHI questionnaire, the Kansas Department of Wildlife, Parks and Tourism has the following comments:

- **Section E., Threatened and Endangered Species Protection:** Consultation for Threatened and Endangered Species upstream and downstream of BMPC has demonstrated that at this time aquatic organism passage could negatively impact federal and state trust species upstream BMPC because of non-native populations inhabiting the Kansas River below BMPC. Therefore, BMPC and facility operations are in accordance with Kansas Department of Wildlife, Parks and Tourism biological opinion of the current conditions although future conditions may deem otherwise. Please refer to Section C statements above.

Please contact me via email or phone for further questions, comments or concerns. jason.luginbill@ksoutdoors
(785) 296-6026

Sincerely,

A handwritten signature in black ink that reads "Jason S. Luginbill". The signature is written in a cursive style with a large, stylized initial 'J'.

Jason S. Luginbill
Ecological Services Section, Chief
Kansas Department of Wildlife, Parks and Tourism



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Kansas Ecological Services Field Office
2609 Anderson Avenue
Manhattan, Kansas 66502



March 19, 2015

Sarah Hill-Nelson
Bowersock Mill and Power Company
P.O. Box 66
Lawrence, KS 66044

RE: Low Impact Hydropower Institute (LIHI) Recertification of Bowersock Mills & Power Company (BMPC)

Dear Ms. Hill-Nelson:

As per your request regarding our October 31, 2014 comments from the LIHI worksheet concerning BMPC impacts to riverine natural resources:

Section C – Fish Passage and Protection

C.1. Yes, American eel is likely occasionally present.

C.3. American eel is likely occasionally present at the site, and likely passes the dam during periods of high flow. The last reported capture of the species in the Kansas River basin that I am aware of was in 2005, below Wilson Reservoir dam (many miles upstream).

Fish passage at this facility has been considered by the USFWS and KDWPT, however never pursued and never mandatorily.

The Kansas River downstream of this structure is now inhabited by the invasive species silver and bighead carps. For this reason, USFWS believes at present that it is advantageous to not have fish passage. If passage was in place these carps would likely expand their range greatly. It is believed if this occurred that these carps would be introduced to upstream impoundments managed for sportfishing, likely disrupting the reservoirs food chain and quality of sportfishing.

C.5.a. There is no passage survival rate data for this structure, as American eels only periodically and at extreme low numbers occur in this river basin.

Section E - Threatened and Endangered Species Protection

E.1. Yes, the pallid sturgeon exists downstream in extremely low numbers. Since 2000, nine pallid sturgeon (predominantly hatchery stock) have been captured downstream of the Johnson County Weir, another partial barrier to fish passage on the Kansas River (approximately 30 river miles downstream).

E.2. Yes, a revised recovery plan was published in March 2014. Bowersock Dam is upstream of all recovery management units. The management unit that includes a portion of the Kansas River basin extends upstream only to the Johnson County Weir.

E.3. There has been no formal consultation, biological opinion, or incidental take permit issued related to the operations of Bowersock Dam and pallid sturgeon.

If you have any further comments or questions please feel free to contact me or Vernon Tabor of my staff.

Sincerely,

A handwritten signature in black ink that reads "Heather Whitlaw / Acting". The signature is written in a cursive style.

Heather Whitlaw
Field Supervisor

cc: KDWPT, ES (Luginbill), Pratt, KS