

Memorandum

To: Michael Sale, Executive Director, LIHI
From: Jeffrey Cueto, P.E.
Date: January 26, 2016
Re: Boulder Creek Hydroelectric Project – LIHI Certificate #31
Recertification Request

This memorandum contains my recommendation for recertification of the Boulder Creek Hydroelectric Project (Project), located in northwestern Montana. It is owned by Confederated Salish and Kootenai Tribes and operated by S&K Holding Company (S&K), a for-profit development corporation owned by the Tribes. LIHI publicly noticed the application for recertification on October 22, 2015, with comments due by December 19, 2015; no comments were received.

Fred Ayer did the original review for certification of the project in 2007, recommending that the facility be certified for a period of eight years effective October 24, 2007. LIHI granted the certification on January 24, 2008; no special conditions were imposed. By letter dated June 19, 2015, LIHI extended the term to December 31, 2015.

I. Recertification Standards.

Sections 2.5, 2.24 and 2.25 of LIHI's Certification Handbook (Updated April 2014) address the process for recertification applications. The first step in the process, after receipt of an application and assignment to an Application Reviewer, provides for an intake review by the Application Reviewer to make an initial determination as to whether there has been either 1) a material change at the facility that would affect the certification or 2) a material revision in the LIHI criteria subsequent to the original certification action. With a determination of no material change, renewal of the certification is granted. Should a determination be made that there has been a material change, the application becomes subject to a full review following a process similar to the initial application.

II. No further application review is recommended.

In support of its application for recertification, S&K filed an updated Questionnaire using the current April 2014 version. I reviewed the Questionnaire, the original project narrative report dated October 2, 2007, and the 2007 reviewer report. Aside from the updated Questionnaire, S&K filed no new information from any resource agency, nor documentation related to current water quality conditions or T&E species. Although such information would have been helpful, it does not seem critical for this project. I reviewed files contained in FERC eLibrary subsequent to the last recertification review in order to determine what project changes have occurred, if any, and what the recent compliance track record has been; however, this project carries a FERC exemption and consequently FERC oversight is fairly limited, with the primary focus being dam safety. Neither the Questionnaire nor the LIHI annual compliance statements¹ indicate any material changes that have occurred since 2007.

Based on available information and my understanding that no relevant material changes in the LIHI criteria, or criteria interpretations, have been made since the certification review in 2007, I concluded that it is not necessary to directly solicit input from resource agencies and exemption process stakeholders. In my opinion, the aforementioned materials are sufficient to support a conclusion that a recertification decision can be made based on this Intake Review, that a Full Review is unwarranted, and that recertification should be granted for a five-year term.

III. There have been no “material changes” at the facility that would affect the certification.

With respect to material changes at the facility, I reviewed the record for instances of non-compliance related to the federal exemption (issued September 23, 1983)² and/or new or renewed issues of concern that are relevant to LIHI’s criteria. I find that there are neither instances of significant non-compliance nor new or renewed issues of concern. It should be noted that the environmental constraints on the Project are limited. The Project is apparently not subject to a water quality certification.

Flows and Fish Passage

Neither conservation flows³ nor fish passage was considered significant issues when the Project was undergoing federal review. Prior to Project construction, it was determined that the stream, which has a drainage area of 7.1 square miles at the diversion structure location, did not support a fishery. Based on this fact and partial replenishment of

¹ Compliance statements available to the reviewer only cover the period from October 2012 through February 2015.

² The record does not indicate that any resource agency opted to impose terms and conditions for the federal exemption.

³ While the Project is considered run-of-river, the penstock-bypassed reach of stream is fairly long. The penstock itself is 3,500 feet in length.

streamflows from groundwater a short distance downstream, the resource agencies accepted total diversion of flows for power generation, up to a capacity of 8 cfs. The main concern raised at the time was the need to avoid construction-related discharges of sediment to Flathead Lake, which supports bull trout, a threatened species. Further, it was determined that fish movement up Boulder Creek is impeded by natural barriers.

Water Quality

Boulder Creek is on reservation lands and, therefore, not assessed by the Montana Department of Environmental Quality for use impairment under Section 303(d). However, in 2007 the Tribal Natural Resources Department indicated that the waters are classified as A-1 and that the Project was in compliance with the Tribal water quality standards.

Threatened and Endangered Species

The current federal list follows. A change from the 2007 review, bald eagles are no longer federally listed. On the list, bull trout and grizzly bear, were considered during the 2007 review. It does not appear that the Project would conflict with any of the species currently listed.

COMMON NAME	SCIENTIFIC NAME	STATUS ¹	RANGE – MONTANA
Bull Trout	<i>Salvelinus confluentus</i>	Threatened; Critical Habitat	Clark Fork, Flathead, Kootenai, St Mary, and Belly river basins; cold water rivers and lakes.
Grizzly Bear	<i>Ursus arctos horribilis</i>	Threatened	Resident, transient; Alpine/subalpine coniferous forest
Canada Lynx	<i>Lynx canadensis</i>	Threatened	Resident; western Montana – montane spruce/fir forests
Spalding's Champion (or "catchfly")	<i>Silence spaldingii</i>	Threatened	Upper Flathead River Fisher River drainages; Tobacco Valley – open grasslands with rough fescue or bluebunch wheatgrass
Water Howellia	<i>Howellia aquatilis</i>	Threatened	Wetlands; Swan Valley, Lake and Missoula Counties
Yellow-billed cuckoo (western population)	<i>Coccyzus americanus</i>	Threatened	Population west of the Continental Divide; riparian areas with cottonwoods and willows
Whitebark Pine	<i>Pinus albicaulis</i>	Candidate	Forested areas in central and western Montana, in high-elevation, upper montane habitat near treeline

Watershed Protection

The Project was granted an additional three years based on LIHI's understanding that S&K was securing a Watershed Lease that would result in a 250-foot conservation buffer around the shoreline. The diversion actually produces a very small impoundment approximately 0.1 acre in size according to the Questionnaire. Although shoreline buffers are beneficial, it is not clear whether LIHI intended to reward applicants when the extent of the buffer is so limited. At any rate, it has come to light that S&K was unable to get the Watershed Lease as explained in the attached email. Consequently, the Project is not eligible for an additional three years of certification term, and technically should have notified LIHI when it first became aware that the lease would not be secured.

Compliance

FERC eLibrary did not contain any documentation of significant environmental issues having been raised over the last eight years.

IV. LIHI's certification criteria have not been revised since the completion of the last certification review in 2007.

LIHI is in the process of revising its certification criteria and publishing a new Handbook, but the transition to the new certification processes will not be implemented until later in 2016. Facilities for which recertification applications have been filed on or before December 31, 2015, are evaluated using the April 2014 version of LIHI's Certification Handbook.

It is my understanding that LIHI's criteria, or the Board's interpretation of one or more criterion, that are applicable to the circumstances the Project have not changed in meaningful ways since the completion of the last recertification review in December 2007.

V. Conclusion.

In light of the above, I recommend recertification of the Boulder Creek Hydroelectric Project for an additional five years, subject to no special conditions. The certification was effective through October 24, 2015 prior to which time LIHI extended the certification through December 31, 2015.

From: Steve Clairmont [mailto:steve@skholdingcompany.com]
Sent: Thursday, January 14, 2016 1:58 PM
To: 'Jeffrey Cueto'
Subject: RE: Boulder Creek Hydro LIHI Application

Hi Jeffrey,

You guessed correctly. We were unable to secure a lease for a buffer zone around the impoundment. The issue resolved around a requirement to have a liability insurance policy for the leased area. Insurance companies needed assurance that we would control all activities within the buffer area, yet the area needed to be available for recreation, hunting, gathering, and other activities that we could not control. We also could not fence the area to control access because that would defeat the purpose of the buffer zone. I requested that the watershed lease be considered as similar to a right-of-way easement, but the lands department did not have the capacity to structure a lease in that manner.

I hope this answers your question.

Best regards,

Steve Clairmont

From: Jeffrey Cueto [mailto:ompompanoo@aol.com]
Sent: Thursday, January 14, 2016 11:29 AM
To: steve@skholdingcompany.com
Cc: 'Mike Sale' <mjsale@lowimpacthydro.org>
Subject: Boulder Creek Hydro LIHI Application

Hi, Steve. I am completing my review of your application for recertification of the Boulder Creek facility. I notice on the LIHI Questionnaire that you indicated under Watershed Protection (Section D.1) that the facility does not have a minimum buffer zone around the impoundment of 200 feet. When LIHI certified the facility in 2008, it awarded an extra three years for the certification (8 years in all) based on the representation that the impoundment would have a 250 feet buffer under a Watershed Lease. Was SKHC unable to secure the lease? Please clarify this for me. I am hoping to report back to LIHI soon.

><{{}}> ***Jeffrey R. Cueto, P.E.***

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