

APPLICATION REVIEW FOR
LOW IMPACT HYDROPOWER INSTITUTE
CERTIFICATION
of the
BLACK BEAR HYDRO PARTNERS
STILLWATER HYDROELECTRIC PROJECT NO. 2712



January 7, 2011

Application Reviewer: Patricia McIlvaine

WRIGHT-PIERCE 
Engineering a Better Environment

**APPLICATION REVIEW FOR LOW IMPACT HYDROPOWER
INSTITUTE CERTIFICATION**

BLACK BEAR HYDRO PARTNERS

STILLWATER HYDROELECTRIC PROJECT NO. 2712

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APPLICATION REVIEW FOR LOW IMPACT HYDROPOWER INSTITUTE CERTIFICATION

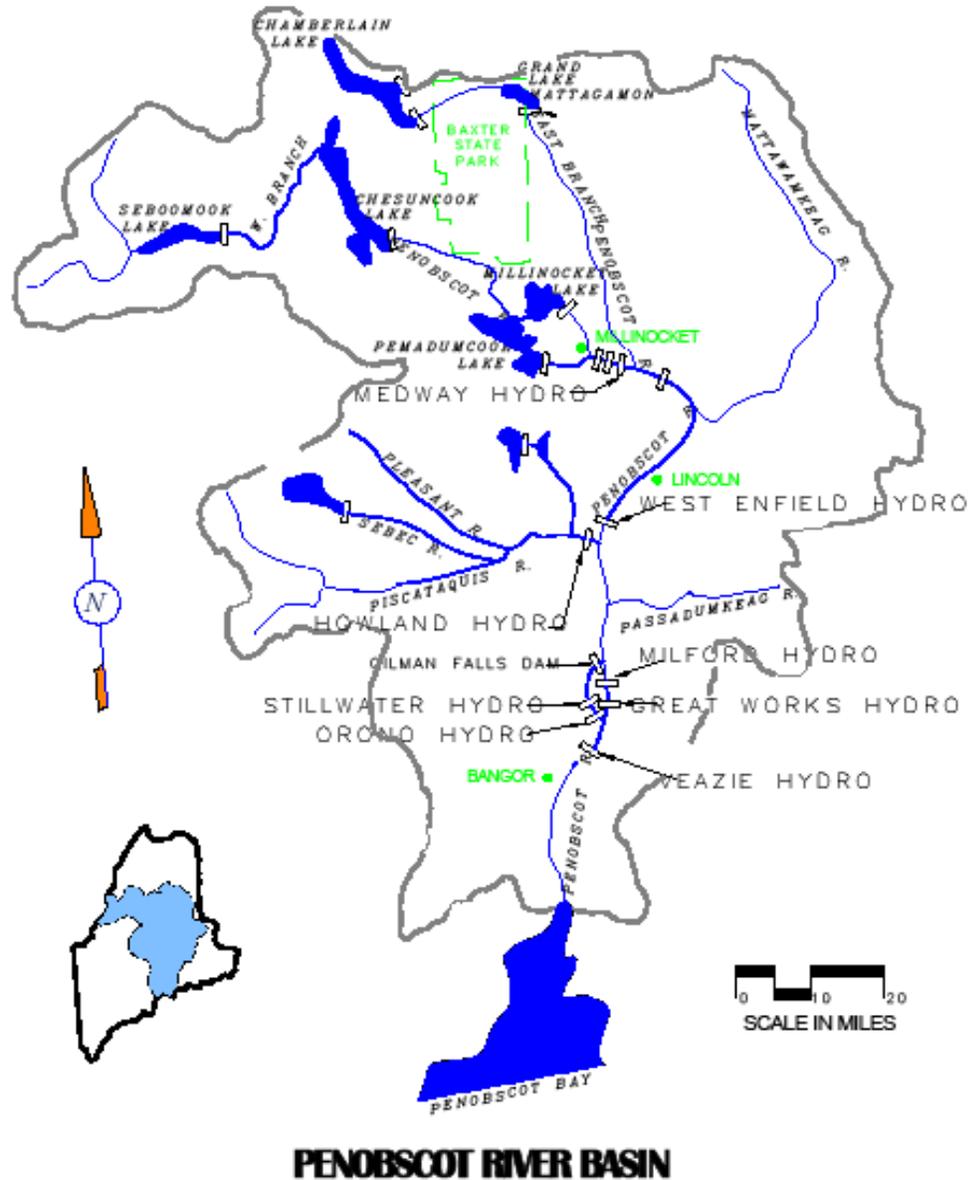
BLACK BEAR HYDRO PARTNERS LLC PROJECT NO. 2712

1.0 INTRODUCTION AND OVERVIEW

This report reviews the application submitted by Black Bear Hydro Partners, LLC ("BBHP" or "Applicant") to the Low Impact Hydropower Institute (LIHI) for Low Impact Hydropower Certification for the Stillwater Project. The Stillwater Project, located on the Stillwater Branch of the Penobscot River ("River") in Old Town, Penobscot County, Maine, is currently licensed by the Federal Energy Regulatory Commission (FERC) as Project Number 2712. The Penobscot River Basin ("Basin") is New England's second largest river system with a drainage area of 8,570 square miles extending from its West Branch near Penobscot Lake near the Maine/Quebec border and its East Branch at East Branch Pond near the headwaters of the Allagash River with the main stem emptying into Penobscot Bay near the Town of Bucksport. Upstream storage dams on both the West and East Branches control a large portion of flows within the drainage area. The Basin includes the East and West Branches of the Penobscot River, the Piscataquis River, the Sebec River, the Pleasant River, the Mattawamkeag River, the Passadumkeag River, the Stillwater Branch and the main stem of the Penobscot River, as illustrated on Figure 1. The Stillwater Project is located on Stillwater Branch of the Penobscot River downstream of the Gilman Falls Dam (which is part of the Milford Hydro Project) and upstream of the Orono Dam. The Mattawamkeag River remains free-flowing, while there are a total of 20 run-of river dams located on the other Basin waterways.

BBHP currently owns and operates five run-of river hydroelectric generating facilities (Stillwater, Medway, West Enfield, Milford and Orono) in the Penobscot River Basin (See Figure 1), which were all purchased from PPL Maine, LLC. The FERC license transferred ownership on September 17, 2009. The Stillwater Project dam and original powerhouse were constructed in 1902 and commenced initial commercial operation in 1913. The Stillwater Project is part of the Lower Penobscot River Basin Multiparty Settlement Agreement (Settlement Agreement) which is discussed further under *1.2 Regulatory History*.

Figure 1
Penobscot River Basin and BBHP Hydroelectric Project Locations



Notes:

1. BBHP owns and operates the Stillwater, West Enfield, Milford, Medway and Orono Projects
2. Under the June 2004 Settlement Agreement, the ownership of the Veazie, Great Works and Howland Projects were sold to the Penobscot River Restoration Trust (PRRT). The PRRT has surrendered each Project license, with the intent of removing the Veazie and Great Works Dams, and either constructing a fish bypass at the Howland Dam, or removal of the dam.

1.1 Project and Site Characteristics

The Stillwater Project has an installed gross nameplate generating capacity of 1.95 MW. The Stillwater Dam is a 1,720 foot long concrete gravity dam, consisting of 13 different sections, having varying lengths, heights and configurations. The walls and foundation of an old, abandoned powerhouse forms part of the dam's non-overflow section. The dam ranges in height from a few inches to 22 feet. Wooden flashboards are attached to the spillway portions of the dam. The Project's current powerhouse is a concrete and wood structure, equipped with four horizontal generating units: three rated at 450-kilowatts (Kw) each and one rated at 600 Kw..

The Project's impoundment is about 3.0 miles long, extending upstream to just below the Gilman Falls Dam, having a surface area of about 191 acres (AC); a gross storage capacity of 1,910 acre-feet (AF); a negligible useable storage capacity; a normal headwater surface elevation of about 93.65 feet NGVD; and a normal tailwater surface elevation of about 73.65 feet NGVD. The maximum hydraulic capacity of the Stillwater Project is 1,700 cubic feet per second (cfs). Flows in the Stillwater Branch exceed the maximum hydraulic capacity of the project 60 percent of the time. Land area occupied by the features described above is estimated at 0.8 acres. Approximately 145.4 acres of land, of which only a small portion is owned by BBHP, is contained in a 200-foot zone extending around the impoundment.

1.2 Regulatory History

Past Licensing

The original FERC license was issued to Bangor Hydro Electric Company (Bangor Hydro) in 1978, which expired in 1993. The project was operated under an annual license until license renewal was approved on April 20, 1998. A 40-year term was approved by FERC to coordinate expiration dates for projects on the same river basin, in support of their policy to consider cumulative impacts of projects in the same river basin collectively at relicensing. Thus, the Stillwater license was issued with the same expiration date as for the Milford and Veazie Projects. The Stillwater license was transferred to Penobscot Hydro LLC, which later became

PPL Maine, LLC, (PPL Maine) in October 2000. The Stillwater Project was subsequently purchased by BBHP and the license transferred on September 17, 2009.

Settlement Agreement

Relicensing and pending appeals for several hydropower projects in the Penobscot River Basin, including the Stillwater Project, occurred over the period from license issuance until 2004. After extensive studies, consultations and legal challenges, the re-licensing process culminated in the signing of the Lower Penobscot River Basin Comprehensive Settlement Accord, which included a number of agreements, including the Lower Penobscot River Multiparty Settlement Agreement.. The Settlement Agreement was jointly entered into and signed on June 25, 2004, by:

- PPL Maine, PPL Great Works, PPL Generation (the owners of Stillwater at this time)
- the Penobscot River Restoration Trust (PRRT)
- Penobscot Indian Nation (PIN)
- United States Department of Interior, acting through the Fish and Wildlife Service (USF&WS), Bureau of Indian Affairs (BIA) and the National Park Service (NPS)
- Maine State Planning Office
- Maine Atlantic Salmon Commission (MASC)
- Maine Department of Inland Fish and Wildlife (MIF&W)
- Maine Department of Marine Resources (MDMR)
- American Rivers, Inc
- Atlantic Salmon Federation
- Maine Audubon Society
- Natural Resources Council of Maine (NRCM), and
- Trout Unlimited (TU).

The Nature Conservancy joined the partnership in 2006. BBHP assumed applicable responsibilities from PPL in 2009 with the FERC license transfer of the Project. The National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) was not a party to the settlement, although they were involved in the earlier licensing

proceedings of the Stillwater Project, and had issued a mandatory fish passage prescription under Section 18 of the Federal Power Act (FPA) on February 16, 1995.

The Settlement Agreement provided the Penobscot River Restoration Trust (PRRT), a non-profit organization, a 5-year option to acquire the Veazie, Howland and Great Works Projects, which was exercised on January 6, 2009. Members of the PRRT are the PIN, American Rivers, Atlantic Salmon Federation, Maine Audubon, NRCM, TU and the Nature Conservancy. Although the option to purchase these facilities was exercised in January 2009, final closing on the property transfer is still pending, although it is expected to occur imminently, per discussion with Ms. Laura Rose Day of PRRT on December 6, 2010. The Settlement Agreement stated that "the closing on the transfer of title of all property under license cannot occur until the FERC has issued an order accepting surrender of all three licenses, it is final and non-appealable, and all other agencies have filed the permits required to perform the proposal." Upon closing, the PRRT would:

- decommission and remove the Veazie and Great Works dams
- decommission the Howland hydropower units, and
- either alter the Howland dam by constructing a state-of-the-art fish bypass that would substantially or entirely maintain existing dam structure and impoundment, if this option is found feasible by the USF&WS, or remove the dam.

PRRT has surrendered each Project's license, and FERC approved the surrender of the licenses on June 16, 2010, although the Order addresses PPL Maine, and not PRRT, as the transfer had not yet taken place when the Order was issued. The Maine Department of Environmental Protection (MDEP) issued permits under the Maine Waterway Development and Conservation Act, and Water Quality Certificates under Section 401 of the Clean Water Act, in mid-July 2010 for the removal of the Veazie and Great Works dams and construction of the fish bypass channel at the Howland Project. The final required permit, from the US Army Corps of Engineers, was obtained in late October 2010.

Incorporated into the Settlement Agreement is maintenance of approximately 90% of the current power production owned by BHHP in the river basin through enhancements at other hydropower

facilities in the basin, including the Stillwater Project. As discussed further below, BHHP has received approval and has already increased generation at the Stillwater and two other Projects through one foot headpond increases, and has the opportunity to add generating capacity at the Stillwater, Orono and Medway Projects, as well as at the Ellsworth Project, located outside the Basin. The added generation resulting from the headpond level increase at the Stillwater project is included in BHHP's application for LIHI certification. However, the applicant's reported intentions to add future capacity of 2.7 MW in a new powerhouse, is not.

Current License

On June 25, 2004 an application was filed with FERC to modify the existing Stillwater license, which included the request to raise the elevation of the reservoir by one foot through the use of flashboards. The PPL Maine application also included the request by the signatories of the Settlement Agreement for FERC to approve project specific amendments to implement the initial phase of the Settlement Agreement.

On January 13, 2005, the MDEP issued a revised WQC adopting the applicable provisions of the Settlement Agreement, including water levels and minimum flows, upstream and downstream fish passage, a Contingent Mitigation Fund, recreation facilities limits of approval, and compliance with all applicable laws, and approving the one-foot headpond level increase.

On April 18, 2005, FERC issued its Order modifying and approving amendment of the Stillwater Project license. The 2005 WQC was made part of this Order. In response to a May 12, 2005 letter from NOAA Fisheries, FERC issued an Order dated May 16, 2005 correcting Article 409, noting that that NOAA Fisheries' prescription is consistent only with Attachment A of the Settlement Agreement.

FERC also incorporated the provisions of the Contingent Mitigation Fund of Attachment B of the Settlement Agreement into the license as Article 414, and via incorporation of the WQC. The Contingent Mitigation Fund would provide mitigation for habitat impacts *if the Veazie, Great Works and Howland projects are not acquired by the Trust and their respective dams not subsequently removed or the bypass at Howland not constructed.* Under the Fund, annual

contributions due to the effects of the headpond increase at Stillwater would be \$1000; the changes in the minimum flow requirements would require an additional \$1000 annually for the term of the license. These fees would be adjusted annually in accordance with the Consumer Price Index. The disposition of the monies would be determined upon mutual agreement among the Penobscot Indian Nation, Bureau of Indian Affairs, USF&WS, NOAA Fisheries, and the state of Maine agencies for replacing the fish and wildlife habitat lost or degraded by habitat effects, compensating for loss or degradation of fish and wildlife habitat due to habitat effects by means other than replacement, and supporting efforts directed at restoring to the Penobscot River fisheries and the habitat on which these fisheries rely.

A review of the FERC database indicated that since the amended license issuance in 2005, only two extensions, and no temporary license condition variances or condition deviations have been requested/reported by BBHP for environmental or recreational issues related to this Project. Each extension request, which was supported by the resource agencies, and approved by FERC, involved a one-year delay in submission of final designs for permanent upstream eel passage facilities. These are further discussed in Section 2.3 *Criteria C -Fish Passage and Protection*.

Given the limited number of requests, and lack of license deviations, it appears that BBHP has demonstrated conscientious attention to the environmentally-related issues associated with the Stillwater Project's FERC License, WQC and Settlement Agreement. Resource agencies consulted also provided similar opinion on BBHP's attention to their compliance requirements.

Discussion of the FERC license, WQC and Settlement Agreement environmental, cultural and recreational requirements are discussed in the various Criteria discussion sections of this report.

1.3 Public Comment

Three comment letters were received by the LIHI on BBHP's application for certification for the Stillwater Project. The Penobscot Nation Department of Natural Resources and Trout Unlimited stated clear support for LIHI certification of the Project. The letter from the PRRT offers positive comments regarding the environmental benefits of the Settlement Agreement, and the part that the Stillwater Project plays in the overall program, although it does not specifically address their position on certification of the Stillwater Project. Subsequent discussions with Laura Rose Day on December 6, 2010, clarified that the PRRT, by policy, does not provide such specific endorsements regarding specific hydropower projects. In addition, she stated that she does not believe she has sufficient complete knowledge of the LIHI criteria to offer such a focused opinion. Copies of the comment letters are contained in Appendix A.

Per communication with Mr. Scott Hall of BBHP, letters were requested, but not received from the resource agencies regarding compliance with their latest recommendations for specified LIHI criteria, namely A.1, B.1, C.1, D.4, E.1 and E.5. As noted elsewhere in this report, it does not appear that the lack of letters was due to concerns on part of the agencies, as those consulted are supportive of BBHP's compliance activities.

2.0 CRITERIA ASSESSMENT

The Low Impact Hydropower Institute certifies those hydropower facilities that meet its eight criteria:

2.1 Criteria A - River Flows:

***Goal:** The facility (dam and powerhouse) should provide river flows that are healthy for fish, wildlife, and water quality, including seasonal flow fluctuations where appropriate.*

***Standard:** For instream flows, a certified facility must comply with resource agency recommendations issued after December 31, 1986, for flows. If there were no qualifying resource agency recommendations, the applicant can meet one of two alternative standards: (1) meet the flow levels required using the Aquatic Base Flow methodology or the “good” habitat flow level under the Montana-Tennant methodology; or (2) present a letter from a resource agency prepared for the application confirming the flows at the facility are adequately protective of fish, wildlife, and water quality.*

BBHP's Stillwater project is in compliance with resource agency recommendations issued after December 31, 1986 regarding flow conditions for fish and wildlife protection. As specified in the amended WQC issued in 2005, and as adopted into Article 401 of the amended FERC license also issued in 2005, the Stillwater Project is to be operated as run-of-river (outflow equals inflow) while passing minimum flows of 20 cubic feet per second (cfs) into the west bypass channel and 50 cfs into the east bypass channel. (These flows are lower than previously required by the 1998 FERC license, and as such, would be subject to additional Contingent Mitigation Fund fees should the Veazie and Great Works dam removals and Howland dam removal or bypass not occur.) Also, the impoundment must be maintained within one foot of full pond elevation of 94.65 feet above mean sea level (msl) when the flashboards are in, or at or above the spillway crest when the boards are out. The April 18, 2005 FERC Order included use of the existing Operation and Monitoring Plan as the approved method for confirming compliance with the new limits.

Review of FERC's database and consultation with Mr. Scott Hall, has indicated that since the amended license issuance in 2005, no reports of deviations from these requirements were required to be reported. When consulted, Mr. Dana Murch of the MDEP did not indicate any concerns regarding compliance with flows requirements at the Project.

A. Flows – The Facility is in Compliance with Resource Agency Recommendations issued after December 31, 1986, as specified in the FERC license, WQC and Settlement Agreement, regarding flow conditions, and headpond levels, for fish and wildlife protection, mitigation and enhancement for both bypass reaches. FACILITY PASSES.

2.2 Criteria B - Water Quality:

Goal: Water quality in the river is protected.

Standard: The water quality criterion has two parts. First, a facility must demonstrate that it is in compliance with state water quality standards, either through producing a recent (after 1986) Clean Water Act Section 401 certification, or demonstrating compliance with state water quality standards (typically by presenting a letter prepared for the application from the state confirming the facility is meeting water quality standards). Second, a facility must demonstrate that it has not contributed to a state finding that the river has impaired water quality under Clean Water Act Section 303(d) (relating to water quality limited streams).

On October 23, 1992 the MDEP granted a WQC which was incorporated into the FERC license issued on April 20, 1998. The Stillwater Project was issued a revised WQC by MDEP on January 13, 2005, incorporating the terms of the Settlement Agreement which included modified flow and headpond limits. This WQC was also incorporated into the amended FERC license. Based on review of the environmental assessment prepared for the Project, the run-of-river mode of operation, and through incorporation of conditions of the Settlement Agreement, the MDEP determined that Project operation, including the increase in headpond level and reduced

minimum flows, would result in affected waters remaining suitable for designated uses including aquatic life, and meeting applicable water quality standards.

The waters of the Stillwater Branch and the section of the Penobscot River affected by the Stillwater Project, including the impoundment, are classified as Class B. Class B waters are considered unimpaired, and suitable for designated uses of drinking water supply after treatment, fishing, recreation in and on the water, and as habitat for fish and other aquatic life, in addition to use as process and cooling water supply and hydropower generation. Water quality modeling conducted by the MDEP predicted that no lowering of dissolved oxygen levels should occur in the Stillwater impoundment as a result of the change in water level.

The WQC included specific requirements for flow, headpond levels, fish and eel passage and, which are addressed under the specific criteria sections of this report. No water quality monitoring is required. When consulted, Mr. Dana Murch of the MDEP did not indicate any concerns regarding water quality at the Project.

B. Water Quality – The Facility is in Compliance with all conditions issued pursuant to a Clean Water Act §401 in the Facility area and in the downstream reach. The reach of the Stillwater Branch upstream, at and downstream of the facility is identified by the state as meeting water quality standards (including narrative and numeric criteria and designated uses) of the Clean Water Act. - FACILITY PASSES

2.3 Criteria C - Fish Passage and Protection:

Goal: The facility provides effective fish passage for riverine, anadromous and catadromous fish, and also protects fish from entrainment.

Standard: For riverine, anadromous, and catadromous fish, a facility must be in compliance with recent (after 1986) mandatory prescriptions regarding fish passage (such as a Fish and Wildlife Service prescription for a fish ladder) as well as any recent resource agency

recommendations regarding fish protection (e.g., a tailrace barrier). If anadromous or catadromous fish historically passed through the facility area but are no longer present, the applicant must show that the fish are not extirpated or extinct in the area because of the facility and that the facility has made a legally binding commitment to provide any future fish passage recommended by a resource agency.

When no recent fish passage prescription exists for anadromous or catadromous fish, and the fish are still present in the area, the facility must demonstrate either that there was a recent decision that fish passage is not necessary for a valid environmental reason, that existing fish passage survival rates at the facility are greater than 95% over 80% of the run, or provide a letter prepared for the application from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service confirming the existing passage is appropriately protective.

Mandatory fish passage prescriptions under FPA Section 18 were initially submitted by the USF&WS on February 17, 1995, and revised on June 22, 1995 and May 20, 1997. NOAA Fisheries submitted their initial prescription on February 16, 1995. These were issued relative to the 1998 licensing proceedings. However, they were contested by the then owner of the Stillwater Project as they were filed after the deadline established by the public notice. Nonetheless, the majority of the agencies' recommendations were incorporated into the 1998 license by FERC.

As a signatory to the Settlement Agreement, the USF&WS 1997 requirements were incorporated into the Agreement, and as such, were incorporated into the amended FERC license issued on April 18, 2005. In a letter dated March 21, 2005 (see Appendix B), NOAA Fisheries confirmed that its fishway prescription (issued pursuant to the 2005 license) is consistent with the intent of the USF&WS's prescription. This letter also states that the need to monitor and evaluate the effectiveness of the fishways, and possible structural, or operational changes to improve their effectiveness, an integral part of the NOAA Fisheries' prescription, was agreed to by both the USFWS and PP&L Maine LLC (the owner of Stillwater at that time) as being included in Attachment A of the Settlement Agreement. Thus, NOAA Fisheries modified its preliminary prescription submitted on November 29, 2004 "in a manner that maintains consistency with fish

passage requirements outlined in the Settlement Agreement, with the only change being that the process prescription (i.e. the effectiveness studies) for referenced projects may be omitted". NOAA Fisheries also maintained that reserving authority to be consistent only with Attachment A of the Settlement Agreement is appropriate. FERC adopted this position in its April 18, 2005 Order, thus the license has both mandatory fish passage requirements (under Articles 406 through 408) and reservation of authority for both the USF&WS and NOAA Fisheries (under Article 409).

The following summarizes the current fish protection, upstream and downstream fish passage requirements. The fish passage requirements vary, based on the outcome of the actions that take place relative to Veazie, Great Works and Howland dams. As the PRRT has exercised the option to purchase them and will close on the transfer imminently, only the provisions applicable to their sale have been analyzed as part of this LIHI certification process, and incorporated herein.

Upstream Anadromous Fish Passage: No upstream fish passage is required at the Stillwater Project. Fred Seavey of USF&WS commented that no upstream fish passage was deemed required for the Stillwater Projects as part of the compromise reached during settlement negotiations. It was determined that as the Stillwater Branch receives 8 to 30% of the river flow, that it was more beneficial for overall fish restoration of the river basin to concentrate the upstream passage for the main stem of the river via state-of-the-art upstream passage at the Milford Project.

Upstream Catadromous (Eel) Passage: Under Article 407, BBHP must review with and obtain approval from applicable signatories to the Settlement Agreement for the siting, design, construction and operation and maintenance of a new upstream eel passage prior to the third migration period following signature of the Settlement Agreement, which is about May 2007.

Downstream Diadromous Fish Passage and Protection: Under Article 406, BBHP must provide downstream passage for all target species which include Atlantic salmon, American shad, alewife, blueback herring and American eel through a two phased approach, with some

requirements occurring at license issuance and/or within one year, and others upon effective transfer of the Great Works, Veazie and Howland dams:

Immediately effective requirements:

- operate the existing surface weir bypass facilities whenever generation occurs during downstream migration periods;
- install trashracks with 1-inch clear openings at the turbine intake within 12 months of the Settlement Agreement (about June 2005).

Upon transfer the Great Works, Veazie and Howland dams

- consult with applicable resource agencies and Settlement Agreement signatories on all facets of the new downstream fish passage facilities design, constructions and testing;
- construct a gated surface and bottom bypass discharging up to 70 cfs during the downstream migration period, with the design required within 6 months, and installation 18 months following approval of the design; and
- if shown to be necessary by effectiveness studies, nightly shutdowns for downstream eel passage for a two week period during their migration period shall be required no sooner than the expiration of the "safe harbor period" specified within the Settlement Agreement (i.e. ten years after the installed fish passage measures have been approved as "effective")

For all Upstream and Downstream Fish Passage Facilities - Under Article 408, BBHP must prepare a plan(s) for monitoring the effectiveness the fish passage facilities; have the plan(s) reviewed and approved by applicable signatories to the Settlement Agreement and filed with FERC. The results of the assessment studies would provide a basis for recommending expected future structural or operational changes at the project, resulting from probable generation expansion identified in the Settlement Agreement.

The following subsections summarize the status of compliance, to date, with the various passage requirements.

Upstream Catadromous (Eel) Passage - An extension request for a one-year delay in submission of final designs for permanent upstream eel passage facilities was requested in

January 2007 to enable better collection of data to site the permanent downstream facility. This request was supported by the agencies and approved by FERC on March 5, 2008. In this Order, FERC also approved use of a temporary "trap and truck" system at Stillwater as very limited eels were observed at the Project during previous monitoring years. A second request for a one-year delay in the installation of the permanent passage was made in March 2009, in part, to incorporate comments from the USFWS obtained during consultation activities on the 2008 eel passage assessment report. Based on information gathered in 2008, PPL proposed installation of two rather than one upstream eel passage facilities. This request was endorsed by the agencies and approved by FERC on April 7, 2009.

Using data collected in the 2009 eel passage assessment studies during which two traps were tested, and with concurrence of the resource agencies, the final design and operational details of the permanent facilities were submitted on June 17, 2010, and approved by FERC on July 8, 2010. This Order approved use of two submerged traps as the permanent upstream passage mechanism at the Project. Agency comments noted that given the need to revisit these passage facilities following anticipated installation of a new powerhouse at the Stillwater Project, such facilities allowed for flexibility to test other locations in the future.

Downstream Diadromous Fish Passage and Protection - Following appropriate agency consultation, the one-inch trashracks were installed on Units 1 and 2 in August 2005. Such trashracks had been previously installed at Units 3 and 4 in 1992. The existing downstream fish passage was appropriately operated as required. No concerns with this fishway operation were expressed during consultation with the USF&WS and MIFW. As the transfer of the Great Works, Veazie and Howland dams has not yet occurred, the licensing requirements for the surface and bottom bypasses and potential unit shutdown periods have not yet been triggered.

Upstream and Downstream Fish Passage Facilities Assessments - Since issuance of the 2005 FERC license adopting the Settlement Agreement, such studies focused on the upstream eel passage facilities. Such studies were conducted annually, reviewed by resource agencies and filed with FERC. As referenced above, such annual studies resulted in improved siting of the eel

passage facilities installed (and tested) in 2009, and the decision to install two rather than one passage, which was endorsed by the resource agencies.

In summary, the Stillwater project is in compliance with mandatory resource agency recommendations regarding these resources. Consultation with all resource agencies having interest in fisheries resources were generally supportive of the actions undertaken by BBHP in support of fisheries restoration programs. MDMR's representative did state that additional enhancement measures could still be implemented, although these were not adopted into the Settlement Agreement or license and therefore are not requirements.

C. Fish Passage and Protection – Mandatory Fish Passage Prescriptions for fish entrainment protection, and upstream and downstream passage of anadromous and catadromous fish, but not riverine fisheries, were issued by Resource Agencies after December 31, 1986. The Facility is in compliance with current Resource Agency Recommendations for fish entrainment protection and fish passage requirements FACILITY PASSES.

2.4 Criteria D - Watershed Protection:

Goal: Sufficient action has been taken to protect, mitigate and enhance environmental conditions in the watershed.

Standard: A certified facility must be in compliance with resource agency recommendations and FERC license terms regarding watershed protection, mitigation or enhancement. These may cover issues such as shoreline buffer zones, wildlife habitat protection, wetlands protection, erosion control, etc. The Watershed Protection Criterion was substantially revised in 2004. The revised criterion is designed to reward projects with an extra three years of certification that have: a buffer zone extending 200 feet from the high water mark; or, an approved watershed enhancement fund that could achieve within the project's watershed the ecological and recreational equivalent of land protection in D.1. and has the agreement of appropriate

stakeholders and state and federal resource agencies. A Facility can pass this criterion, but not receive extra years of certification, if it is in compliance with both state and federal resource agencies' recommendations in a license-approved shoreland management plan regarding protection, mitigation or enhancement of shorelands surrounding the project.

The Stillwater Project does not have a conservation buffer zone, watershed enhancement fund, watershed land protection plan nor a shoreland management plan. The FERC boundary for the Project primarily contains only the land necessary for operation and maintenance of the project facilities. The land around the impoundment is primarily forested with small residential areas along the lower impoundment.

Most state and federal agencies which typically require development of such watershed protection requirements, such as the USF&WS, NPS, MIF&W, were all signatories to the Settlement Agreement. According to Mr. Steve Timpano, of MIF&W, during these negotiations, these agencies did not determine that such land protection instruments were required for the project. The Maine Department of Conservation (MDOC) is another state agency that typically reviews hydropower projects and provides recommendations regarding the need for a shoreland management plan, if recreational access is a need in the area. The MDOC was not party to the Settlement Agreement process. Discussion with Ms. Katherine Eickenberg of the MDOC, confirmed that such land protection measures were not found to be required at the Stillwater Project.

Article 413 of the 1998 FERC license which includes requirements dealing with "Use and Occupancy" of project lands also offers some watershed protection, as allowable uses "must be consistent with the purposes of protecting and enhancing the scenic, recreational and other environmental values of the project". Finally, activities at the Project that may cause land disturbance are subject to standard requirements for erosion and sedimentation control requirements, and state regulated setback requirements.

D. Watershed Protection –The Project is not required to have a designated buffer conservation zone, approved watershed enhancement fund, watershed land protection plan nor a shoreland management plan under the Settlement Agreement which was signed by appropriate stakeholders and state and federal resource agencies. The facility is in compliance with the license Article related to land uses around the project which are consistent with protecting environmental values of the project. - FACILITY PASSES.

2.5 Criteria E - Threatened and Endangered Species Protection:

Goal: The facility does not negatively impact state or federal threatened or endangered species.

Standard: For threatened and endangered species present in the facility area, the facility owner/operator must either demonstrate that the facility does not negatively affect the species, or demonstrate compliance with the species recovery plan and any requirements for authority to “take” (damage) the species under federal or state laws.

The 1984 EIS prepared for the relicensing of the Stillwater Project found that the bald eagle is the only federally listed species in the project area. It is considered a year round resident in the general Penobscot River basin but is not known to nest near the Project. The Bald Eagle, while delisted federally on in 2007, and in 2009 in the State of Maine, is still protected by the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. During consultation in 2005, the USF&WS stated that the nesting population of bald eagle in the Lower Penobscot Basin in 2004 was about 325 pair. In a letter dated October 5, 2010, the USF&WS reported on bald eagle nesting in the spring of 2005 approximately three miles downstream of the Stillwater Project, just below Ayers Island on the mainstem of the Penobscot River.

Two currently endangered fish species - shortnose sturgeon and the Gulf of Maine Distinct Population Segment (DPS) of Atlantic salmon - are found in areas further downstream. The Gulf of Maine DPS of Atlantic salmon was listed in 2009. The EA states that other studies have shown that the upstream limit of the shortnose sturgeon population range for all northeast rivers

supporting sturgeon, except the Connecticut River, is at the first dam on the river. The EA reported that most likely upstream extent of this species in the Penobscot River is at the Veazie Dam which is the first obstacle to fish passage, about eight miles downstream of the Stillwater Project. Information presented in the Environmental Assessment prepared in 2010 for the removal of the Veazie and Great Works Dams, indicated that shortnose sturgeon use the Penobscot River downstream of the Veazie Dam for feeding and overwintering, but no spawning by this species in the Penobscot River has been documented to date. The Atlantic salmon is found downstream of the former site of the Bangor dam, about 11 miles downstream of the Stillwater Project.

Impacts to both state and federally listed protected species were investigated by PPL Maine during their application for amendment of the Stillwater Project for the increase in headpond elevation and incorporation of the Settlement Agreement provisions. The Environmental Report (ER) submitted as part of their application in June 2004, identified that there are no registered critical areas, and no state or federal-listed threatened or endangered species known to occur in the vicinity of the project. The Maine Natural Heritage Program reported the presence of seven rare plants historically known to be located within the project area. One of these, shining ladies'-tresses (*Spiranthes lucida*), which is a state-listed threatened species, was previously found two miles upstream of the dam. None of the rare plants are believed to be in the area influenced by the impoundment elevation increase.

Both MIF&W and USF&WS are signatories to the Settlement Agreement. The only provisions within the Settlement Agreement directly pertaining to federal or state endangered and threatened species is that the USF&WS agrees to negotiate with the project owner for an appropriate instrument under the Endangered Species Act regulations, such as but not limited to, an incidental take permit or a Candidate Conservation Agreement with Assurances, that recognizes the benefits to Atlantic salmon resulting from implementation of the numerous provisions of the Settlement Agreement.

A Recovery Plan for the Gulf of Maine DPS Atlantic salmon was issued in 2005, but is currently under revision according to Mr. Jeff Murphy of NOAA Fisheries.. A Final Recovery Plan for

Shortnose sturgeon was issued in December 1998, by NOAA Fisheries. While this species is currently not found at the Stillwater Project, the river restoration activities of the Settlement Agreement for the lower Penobscot River Basin, including removal of certain downstream dams and installation of upstream fish passage at others, is in conformance with the Recovery Plan.

Because the Penobscot run of Atlantic salmon was added in 2009 to Gulf of Maine DPS listed as endangered, and shortnose sturgeon would potentially have access to these waters upon removal of the downstream dams, BBHP is working with the USF&WS and NOAA Fisheries to develop a Species Protection Plan(s) for both species for BBHP's Orono and Stillwater Projects. Emails between Mr. Scott Hall of BBHP and Mr. Jeff Murphy of NOAA Fisheries, and between Mr. Murphy and P. McIlvaine, confirming this ongoing plan(s) development, are included in Appendix C of this report. The initial sections of the plan(s) have been drafted by BBHP and are currently under agency review. The complete draft plan(s) are expected to be issued for agency review and comment shortly, with the final plan(s) finalization within the first quarter of 2011. As the plans are still in draft form this time, when consulted, Mr. Murphy could not confirm that the draft Species Protection Plan(s) are in conformance with the yet to be updated Recovery Plan.

E. Threatened and Endangered Species Protection –There are two endangered species (Atlantic salmon and shortnose sturgeon) listed under the federal Endangered Species Act that are not currently present in the vicinity of the Facility but may become present upon removal of a downstream dam. The applicant is working in consultation with federal agencies in the development of a species protection plan for both species. FACILITY PASSES

2.6 Criteria F - Cultural Resource Protection:

Goal: *The facility does not inappropriately impact cultural resources.*

Standard: *Cultural resources must be protected either through compliance with FERC license provisions, or, if the project is not FERC regulated, through development of a plan approved by the relevant state, federal, or tribal agency.*

Article 412 of the 1998 license requires, implementation of the "Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the Maine State Historic Preservation Officer, for Managing Historic Properties That May Be Affected By A License Issued To Bangor Hydro-Electric Company To Continue Operating The Stillwater Hydroelectric Project In Maine" (Programmatic Agreement), executed on August 8, 1997, including but not limited to the Cultural Resources Management Plan (CRMP) for the Project. The draft CRMP was submitted for review to the State Historic Preservation Office (SHPO), PIN and the US Department of Interior. As noted in the FERC Order of November 29, 1999 approving the CRMP, comments received from the agencies were incorporated into the final CRMP. Review of these letters showed no specific technical changes were identified for the Stillwater Project's CRMP. Requirements include filing of an annual report of activities conducted under the Stillwater CRMP with FERC, the SHPO, PIN and the US Department of Interior.

The Maine Historic Preservation Commission, SHPO's Office, in a letter dated March 15, 2004, found that the project changes filed for in 2004 were reviewed pursuant to Section 106 of the National Historic Preservation Act and concluded there would be no effect upon historic (architectural or archaeological) properties.

The latest filing made by BBHP on April 20, 2010, continues to report that no cultural resources have been found at the Stillwater Project. Recent consultation with Ms. Bonnie Newsom, Tribal Historic Preservation Officer for the PIN, confirmed that she was involved in the settlement process and is very satisfied with the consultation conducted by Mr. Scott Hall, who has been

with this Project since ownership by Bangor Hydro. She has no doubt that should any issues arise in the future that the PIN's concerns would be honored and resolved.

F. Cultural Resources – The Facility is in Compliance with all requirements regarding Cultural Resource protection, mitigation or enhancement included in the FERC license - FACILITY PASSES.

2.7 Criteria G - Recreation:

Goal: The facility provides free access to the water and accommodates recreational activities on the public's river.

Standard: A certified facility must be in compliance with terms of its FERC license or exemption related to recreational access, accommodation and facilities. If not FERC-regulated, a facility must be in compliance with similar requirements as recommended by resource agencies. A certified facility must also provide the public access to water without fee or charge.

Article 410 of the 1998 FERC license required the construction, operation and maintenance, of the following recreational facilities, after consultation with the Maine Department of Conservation and the MDEP, Bureau Land Quality Control, within one year of license issuance:

- (1) installation of fencing around the parking area on the east bank of the Stillwater dam and signs warning against launching canoes and walking out on to the dam;
- (2) provision of gravel fill to the University of Maine to be used to create parking areas and one hand-carry boat and canoe access site;
- (3) provision of surfacing materials for handicapped access to the northern cove in the University Forest adjacent to the Stillwater impoundment; and
- (4) designation of a visitor parking area at the Stillwater powerhouse, maintenance of the portage trail around Stillwater dam, provision of safety booms and hazard warning signs near the Stillwater dam, and completion of FERC Form 80 surveys.

Article 411 requires monitoring of recreation and Indian cultural use of the project area to determine whether existing recreation facilities are meeting recreation and Indian cultural use needs. Monitoring requirements would be developed through consultation with the Town of Orono, NPS, PIN, MDEP, and Maine Department of Conservation. Monitoring studies must be conducted every six years and filed with FERC.

All recreational facilities required by Article 410 were constructed in 1999. In lieu of providing gravel to the University of Maine, FERC approved provision of funding to the University for surfacing of the parking facilities on September 19, 2000.

Review of the last two reports required under Article 411, submitted in 2004/2005 and 2010, reported no comments were provided through the required agency consultations. The reports were found acceptable by FERC on May 15, 2005 and May 26, 2010, respectively. Consultation with PIN indicated no issues with the recreational features at the Stillwater Project. The MDOC could not be reached on this subject.

G. Recreation – The Facility is in Compliance with all requirements regarding Recreation protection, mitigation or enhancement included in the FERC license and allows access to the reservoir and downstream reaches without fees or charges - FACILITY PASSES

2.8 Criteria H - Facilities Recommended for Removal:

Goal: To avoid encouraging the retention of facilities which have been considered for removal due to their environmental impacts.

Standard: If a resource agency has recommended removal of a dam associated with the facility, certification is not allowed.

No resource agency has recommended removal of the dam associated with the Stillwater Project.

<p>H. Facilities Recommended for Removal – There are no Resource Agency Recommendations for removal of the dam associated with the Facility. FACILITY PASSES.</p>
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3.0 RECOMMENDATION

This application review was conducted by Patricia McIlvaine, Project Manager with Wright-Pierce. My review of BBHP Hydro LLC's application for certification as a "low impact hydropower facility" under the criteria established by the LIHI consisted of the following:

- review of information submitted by the applicant both in the initial application package and in response to document requests and questions raised by me;
- review of additional documents obtained from the FERC on-line database and BBHP's website available for public review; and
- consultation with the resource agency and non-governmental personnel listed in Section 4.0 of this report.

I believe that the Stillwater Project is in compliance with all of the criteria required for LIHI certification. Their commitment to ensuring compliance with all environmental, recreational and cultural resource obligations specified in the FERC license, WQC and Settlement Agreement is apparent from review of the numerous documents and reports prepared by BBHP. All resource agency and non-governmental organizations reached through telephone consultation provided consistent positive opinions about BBHP's cooperation through the license compliance activities.

In summary, I recommend that the Stillwater Project be certified as a "low impact hydropower facility" under the criteria established by the LIHI. However, due to the ongoing development of certain aspects of their environmental protection measures, I recommend that this certification contain the following conditions:

- 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, than re-analysis of the Stillwater Project against LIHI certification criteria, incorporating these alternative fish passage provisions must be requested / performed.
- As the installation of the new fish passage bypasses, and the potential requirement for two-week unit shutdowns to enhance downstream eel passage, will be triggered upon

final closure on transfer of the Great Works, Veazie and Howland Projects to the PPRT, which is expected to occur within the term of LIHI certification, future annual status of compliance reports to LIHI must include appropriate documentation to demonstrate compliance with these requirements, in addition to other standard status reporting requirements.

- BBHP shall provide LIHI evidence of the agencies' approval of the Species Protection Plan currently under development for the Atlantic salmon and shortnose sturgeon. Also, LIHI shall be provided a copy of any documentation required of BBHP for agency submission, confirming that required compliance activities under the Plan for the Stillwater project are being met.

LIHI would reserve authority to suspend or revoke certification if any of the conditions are not successfully satisfied.

This certification does not include modifications to the Stillwater Project associated with the planned development of a second powerhouse and generation capacity additions. Should such modifications receive FERC approval within the term of this LIHI certification, such changes would require submission of a new application for certification of the Stillwater Project in order to assess compliance of the augmented project with LIHI certification criteria.

4.0 RECORD OF COMMUNICATIONS

This section documents the contacts made with resource agencies, other interested parties and the applicant during the review of this application. A summary of the comments are included. Contact was made primarily with the key resource agencies as questions or clarifications needed to complete the application review involved these agencies. While BBHP provided a contact for each organization involved, to some point, in the Settlement negotiations, many were not consulted as there were no questions involving their area of expertise. Key email communications are contained in Appendix C.

Communications Made

Date of Communication	Telephone calls on 11/22, 11/24 and 12/29 and 12/30/10 and emails on 11/30/10, 12/06 and 12/28/10
Application Reviewer	Patricia McIlvaine
Person Contacted	Mr. Scott Hall Black Bear Hydro Partners
Telephone and email address	207-827-5364; shall@blackbearhydro.com
The purpose of the November telephone calls 2010 was to inform Mr. Hall that if he desired review of the Stillwater Project by LIHI at this time, that the application cannot reference certification of the future generation expansion, as that new generation has not yet received regulatory approval. He re-submitted the application on 12/6/10. I contacted Mr. Scott Hall on a number of occasions via telephone to obtain additional documents applicable to the Stillwater Project to support the various responses included in the application. Emails were limited to requests and responses for licensing and agency documents to support the application.	

Date of Communication	Telephone call on 12/6/10
Application Reviewer	Patricia McIlvaine
Person Contacted	Laura Rose Day Penobscot River Restoration Trust
Telephone	207-430-0014
I contacted Ms. Day to discuss the comment letter that PRRT submitted to LIHI regarding the application made for the Stillwater Project as it did not specifically address whether or not PRRT believed the Project should be certified as a "low impact" hydro facility. She stated that the PRRT, by policy, does not provide such specific endorsements regarding specific hydropower projects. In addition, she stated that she does not believe she has sufficient complete knowledge	

of the LIHI criteria to offer such a focused opinion. She does however support the overall river basin restoration project due to its many environmental benefits.

Date of Communication	Telephone calls 12/2, 12/6/ and 12/29/10
Application Reviewer	Patricia McIlvaine
Persons Contacted	Steve Timpano ME Dept of Inland Fish & Wildlife
Telephone	207-287-5258
<p>Discussions were held on a variety of topics. Mr. Timpano stated that BBHP has been very cooperative with the resource agencies in complying with the requirements of their license and Settlement Agreement. Activities are progressing on schedule with no new issues arising. He stated that MEDIF&W and Maine Department of Conservation (MDOC) are the state agencies that typically would require development of land protection measures such as a shoreland management plan for Projects where it was determined that public access was required for hunting or angling activities, or where habitat preservation for protected species was determined to be necessary. None of these were determined necessary for the Stillwater Project. Sufficient public access to the impoundment and river was already available. He stated that MDOC did not participate in the Settlement negotiations, and suggested contacting Katherine Eickenberg to confirm the reason the MDOC was not involved. Regarding protected species, Mr. Timpano confirmed that no state listed endangered or threatened species are expected to be negatively impacted by the operation of the Stillwater Project. He confirmed that the bald eagle was delisted in 2009 in the State of Maine, but is still protected by the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The bald eagle is still known to feed in the area but is not known to nest near the Project. Project activities would not negatively affected the use of the project area by eagles.</p>	

Date of Communication	Telephone call on 12/2/10 and 12/20/10 Email on 12/09/10
Application Reviewer	Patricia McIlvaine
Person Contacted	Fred Seavey USF&WS
Telephone and email address	207-866-3344; fred_seavey@fws.gov
<p>In response to my initial call, Mr. Seavey confirmed that USF&WS did not issue a final Section 18 fish passage prescription for Stillwater; only a preliminary one was issued which was incorporated into the Settlement Agreement. However compliance with the requirements identified in the Settlement Agreement would satisfy USF&WS's primary concerns. So far, he is content with the compliance activities undertaken by BBHP at the Stillwater project which were dictated by the Settlement Agreement. He feels BBHP is generally responsive to their requests and has been good to work with. He commented that no upstream fish passage was deemed</p>	

required for the Orono and Stillwater Projects as part of the compromise reached during settlement negotiations. It was determined that as the Stillwater Branch receives 8 to 30% of the river flow, that it was more beneficial for overall fish restoration of the river basin to concentrate the upstream passage for the main stem of the river via state-of-the-art upstream passage at the Milford Project.

Date of Communication	Telephone call on 12/20/10 and 1/4/11
Application Reviewer	Patricia McIlvaine
Person Contacted	Dana Murch MDEP
Telephone	207-287-7784
<p>Mr. Murch and I discussed his opinion on the overall compliance activities conducted by BBHP. Mr. Murch stated that working with Mr. Scott Hall, who worked for PP&L, and now BBHP, on the Penobscot Projects, has been refreshing in that his approach to compliance is to "do things properly". BBHP activities on eel passage have far exceeded those of any other Project owners in Maine Mr. Murch did report that he is not aware of any minimum flow deviations or water quality issues at the Project.</p>	

Date of Communication	Telephone call on 12/2/10 and 12/6/10 Email on 12/09/10 and 1/4/11; responses on 12/14/10 and 1/4/11
Application Reviewer	Patricia McIlvaine
Person Contacted	Mr. Jeff Murphy NOAA National Marine Fisheries
Telephone and email address	207-866-7379 jeff.murphy@noaa.gov
<p>While I did not receive a telephone call response, the email response I received on 12/14/10 is attached in Appendix C. As appropriate, key aspects of those communications have been incorporated into the criteria sections of the report.</p>	

Date of Communication	Telephone call on 12/29/10
Application Reviewer	Patricia McIlvaine
Person Contacted	Ms. Katherine Eickenberg Maine Department of Conservation
Telephone	207-287-4963

Ms. Eickenberg confirmed that neither she nor any of the current staff at the MDOC were at the MDOC during the Settlement Agreement negotiations for the Penobscot projects. She did state that if the other participating Maine agencies believed that such land management protection requirements were important at the Stillwater Project, than the MDOC likely would have been involved. Issues typically of concern to the MDOC include those previously identified by Mr. Steve Timpano. She also stated that land protection measures are typically not incorporated at projects that have small impoundments

Date of Communication	Telephone call on 1/4/11
Application Reviewer	Patricia McIlvaine
Person Contacted	Ms. Bonnie Newsom PIN Tribal Historic Preservation Officer
Telephone	207-817-7332
Ms. Newsom stated she was party to the Settlement Agreement and has worked with Mr. Scott Hall on the Penobscot Projects since they were owned by Bangor Hydro. She stated she is very satisfied with all of the past and current consultation conducted by Mr. Hall regarding tribal cultural resources. She stated she has no doubt that should any issues arise in the future, that the PIN's concerns would be honored and resolved by BBHP.	

Date of Communication	Telephone calls on 12/20, 22, 29/10 and 1/7/11
Application Reviewer	Patricia McIlvaine
Person Contacted	Mr. Patrick Keliher and Mr. Norm Dube Maine Department of Marine Resources
Telephone	207-941-4453
Mr. Dube returned my calls to Mr. Patrick Keliher. When asked about BBHP's overall compliance activities, Mr. Dube stated that all required activities have been completed to date in accordance with the license and Settlement Agreement, although that is not to say that additional activities or protection measures could not be employed to even further enhance fisheries protection.	

Date of Communication	Telephone 1/7/11
Application Reviewer	Patricia McIlvaine
Person Contacted	Mr. John Banks Penobscot Indian Nation, Dept. of Natural Resources

Telephone	207-817-7330
I asked Mr. Banks about BBBHP's compliance regarding recreational issues He stated that such issues are not a concern at the Stillwater Project, as evidenced by the fact that they were not incorporated into the Settlement agreement.	

APPENDIX A

COMMENT LETTERS RECEIVED BY LIHI

Patricia B. McIlvaine

From: Fred Ayer [fayer@lowimpacthydro.org]
Sent: Monday, August 02, 2010 7:20 AM
To: pbm@wright-pierce.com
Subject: Fwd: Certification of the Orono, Stillwater, and Medway Hydroelectric Project

Pat, Here it is. Cheers, Fred

----- Forwarded message -----

From: **John Banks** <John.Banks@penobscotnation.org>
Date: Fri, Jul 30, 2010 at 1:20 PM
Subject: Certification of the Orono, Stillwater, and Medway Hydroelectric Project
To: "info@lowimpacthydro.org" <info@lowimpacthydro.org>

Dear Mr.Ayer,

The Penobscot Nation Department of Natural Resources (PIN/DNR) has reviewed the three projects along with the certification criteria for low impact certification through your institution (LIHI).

It appears that the three projects meet all applicable criteria and I hereby express the support of PIN/DNR for the approval of LIHI certification for these three projects.

Thank you.

Sincerely,

John S.Banks
Director of Natural Resources
Penobscot Nation
12 Wabanaki Way
Indian Island, ME 04468
(207)817-7330
(207)356-5022 (cellular)
(207) 817-7466 (Fax)
john.banks@penobscotnation.org

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Fred Ayer
Executive Director
Low Impact Hydropower Institute
207-773-8190
fayer@lowimpacthydro.org

Patricia B. McIlvaine

From: Fred Ayer [fayer@lowimpacthydro.org]
Sent: Monday, August 09, 2010 7:41 AM
To: Patricia McIlvaine
Subject: Fwd: BBHP Application for Stillwater, Orono and Medway

Pat, Here's an additional comment letter for the Penobscot project. Cheers, Fred

Begin forwarded message:

From: "Laura Rose Day" <laura@penobscotriver.org>
Date: August 1, 2010 4:59:34 PM EDT
To: <info@lowimpacthydro.org>
Subject: **BBHP Application for Stillwater, Orono and Medway**

July 31, 2010

Mr. Fred Ayer, Executive Director
Low Impact Hydropower Institute
34 Providence Street
Portland, ME
04103

RE: Pending Application for LIHI certification for the Stillwater (FERC No. 2712), Orono (FERC No. 2710) and Medway (FERC No. 2666) Projects

Dear Fred,

The Penobscot River Restoration Trust ("Penobscot Trust") appreciates the opportunity to submit the following comments on the Low Impact Hydropower Institute's ("LIHI") Pending Application for the proposed LIHI certification of the Pending Application for LIHI certification for the Stillwater (FERC No. 2712), Orono (FERC No. 2710) and Medway (FERC No. 2666) Projects.

The Penobscot Trust is a 501(c)(3) not-for-profit organization whose sole mission is to restore the Penobscot River ecosystem by implementing the historic Penobscot Agreement, a roadmap for innovative, public-private plan for river restoration. The Penobscot Trust's board includes representatives of the Penobscot Indian Nation and six conservation organizations (Atlantic Salmon Federation, Natural Resources Council of Maine, American Rivers, Trout Unlimited, Maine Audubon, and The Nature Conservancy) as well as three individual trustees.

The Agreement calls for the Trust to purchase three dams, remove the two lowermost dams, and bypass a third further inland. It also calls for fish passage improvements and conditions at several others dams, including the three that Black Bear Hydro has proposed for certification. Parties to the Penobscot Agreement include the Penobscot Indian Nation, PPL Corporation, the United States Department of the Interior (Bureau of Indian Affairs; National Park Service; and U.S. Fish and Wildlife Service); the State of Maine (State Planning Office, Inland Fisheries and Wildlife, and the Department of Marine Resources, and several conservation organizations (Atlantic Salmon Federation, Natural Resources Council of

Maine, American Rivers, Trout Unlimited, Maine Audubon).

Black Bear Hydro Partners became a party to the Agreement when it purchased several of PPL's assets in 2009, assuming all obligation under the agreement. The Penobscot Trust has exercised its option and is preparing to close on three dams that remain in PPL's ownership – Veazie, Great Works and Howland. We will, therefore, cooperate and otherwise work BBHP in various capacities as we move forward to implement the project over the coming years.

The Stillwater, Orono and Medway Projects are integral to the Penobscot Agreement. In the context of the overall Penobscot Agreement, provisions governing these dams play an important role in achieving an improved balance between hydropower and fisheries on the Penobscot River. As a whole, the project will significantly decrease the cumulative impact of dams in the lower Penobscot River system on fish passage, contributing significantly to the Agreement's overall goal of significantly increasing migratory access to nearly 1000 miles of habitat for Atlantic salmon and ten other sea-run fish. We urge you to fully consider this tremendous ecological benefit as you consider BBHP's application.

Please note that the Penobscot Trust's primary focus is the role that hydropower projects, including the projects proposed for certification, play in restoring sea-run fisheries of the Penobscot River, particularly their role in the Penobscot Project. We recognize, however, that although it is far-reaching and historic in its contributions to the restoration of the Penobscot River's sea-run fisheries, the project not designed to address every issue in the entire Penobscot River system, and our comments do not relate to any appropriate fisheries objectives beyond the scope of the Penobscot Project.

Finally, in general and apart from this particular certification, one of the lessons of the Penobscot Project is how much can be accomplished by appropriately considering the impacts of facilities over time both at specific sites and the cumulative impacts of projects. We encourage LIHI to pursue continuous improvement of its criteria to ensure that LIHI certifications are applied to exemplary projects that truly play a long-term, exemplary role in protecting and restoring the full range of assets that rivers provide.

Thank you for the opportunity to provide input; I hope these comments are helpful to you. If you have any questions, please feel free to contact me at (207) 232-5976.

Sincerely,

Laura Rose Day

(207) 232 5976

laura@penobscotriver.org



**P.O. Box 2613
Augusta, Maine 04338**

August 2, 2010

Mr. Fred Ayer, Executive Director
Low Impact Hydropower Institute
34 Providence Street
Portland, ME
04103

RE: Stillwater Hydroelectric Project
FERC No. P-2712

Dear Fred:

On behalf of Trout Unlimited (TU), I hereby submit the following comments on the Low Impact Hydropower Institute's ("LIHI") Pending Application for the proposed LIHI certification of Black Bear Hydro Partners' Stillwater hydroelectric project on the Stillwater branch of the Penobscot River in Orono, Maine.

As you know, TU is national organization whose mission is to conserve, protect and restore North America's trout and salmon and their habitat. To that end, TU's membership and staff has worked for more than 30 years to address the substantial impacts of hydroelectric developments on fish passage, in-stream flows and fish habitat. TU participated in the negotiations leading up to the Penobscot River Restoration Agreement, and TU was a signatory to the 2004 Multi Party Agreement (MPA) on the Penobscot.

TU believes that the Stillwater Project should qualify for certification by LIHI, and TU supports Black Bear's application. We offer the following comments on the Stillwater Project's compliance with LIHI's standards:

Flows: The Stillwater Project is operated as a run-of-river project.

Water Quality: The State of Maine has issued a 401 Water Quality Certificate and TU is unaware of any water quality problems caused by the existence or operation of the Stillwater Project.

Fish Passage: TU would not ordinarily support certification of a project that has not constructed and tested permanent upstream and downstream fish passage for native diadromous fish. However, in this case Black Bear's application is offered in the context of an agreement that although it does not provide immediate upstream and downstream passage for all species, was agreed to by state and federal fisheries agencies, the Penobscot Indian Nation, and several environmental groups, including TU. Importantly, the agreement (1) provides a framework for future fish passage within the Penobscot watershed; and (2) provides a mechanism by which fish passage past the project (and the downstream Orono Project) is substantially enhanced through the removal of the Veazie and Great Works dams on the mainstem Penobscot River, which offers an alternative and preferable migration corridor. In this context, TU believes the passage provisions in LIHI's criteria are met.

Watershed Protection: The Stillwater Project meets LIHI's standards. TU notes that the project impoundment is small, located in an urban/suburban area and surrounded by a significant amount of development, and isolated on a river channel that is just one side of a large island.

Threatened and Endangered Species: Atlantic salmon, and, after the removal of the Veazie Dam, shortnose sturgeon, are present in the Penobscot River below the Stillwater Project, and a portion of the river's population of Atlantic salmon smolts passes through the project each spring. TU notes the correspondence with Jeff Murphy of NOAA Fisheries that Black Bear which Black Bear has shared. This indicates that Black Bear is currently working with NOAA on a "Species Protection Plan" for Atlantic salmon at the Orono and Stillwater Projects. In order to ensure that Atlantic salmon are adequately considered in LIHI's certification, TU suggests that LIHI require that Black Bear complete consultation on the Species Protection Plan and implement any measures required by it as a condition of certification.

Recreation: The Stillwater Project has adequate public access and provisions for recreation on its small impoundment.

Facilities Recommended for Removal: To our knowledge, removal of the Stillwater Project has never been suggested by any agency. LIHI should be aware, however, that removal of the Veazie and Great Works Project has been recommended by multiple agencies, NGO's and the Penobscot Indian Nation, and that the hydropower improvements at the Stillwater Project are an integral part of the agreement that will result in their removal. TU asks LIHI to consider the Stillwater Project's contribution to achieving this benefit as part of its consideration.

Conclusion

Trout Unlimited supports Black Bear's application for certification of the Stillwater Project. In recognition of its relatively low environmental impact, and particularly in light of its contribution to the improvements in fish passage in the lower Penobscot River watershed, TU urges LIHI to approve Black Bear's application. As noted above, we believe that successful completion and implementation of the Species Protection Plan that is currently in development should be a condition of certification.

Thank you for this opportunity to comment.

Sincerely,

Jeff Reardon
New England Conservation Director
(207) 615 9200
jreardon@tu.org

APPENDIX B

KEY RESOURCE AGENCY DOCUMENTS REFERENCED IN THIS REVIEW REPORT



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930-2298

March 21, 2005

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Re: Modified Prescription for Veazie (P-2403), Stillwater (P-2712), Milford (P-2534),
Medway (P-2666) and West Enfield (P-2600) Projects

Dear Ms. Salas:

On November 29, 2004, the Department of Commerce, through NOAA Fisheries Service, filed its preliminary fishway prescription modification with the Federal Energy Regulatory Commission (Commission) pursuant to Section 18 of the Federal Power Act for the Veazie (P-2403), Stillwater (P-2712), Milford (P-2534) projects and reservation of authority to prescribe fishways at the Medway and West Enfield Projects on the Penobscot River, Maine. The preliminary prescriptions were consistent with the actions of the Lower Penobscot River Basin Multiparty Settlement Agreement (MPA) submitted to the Commission on June 25, 2004.

Consistent with the Mandatory Conditions Review Process (MCRP), NOAA Fisheries Service has solicited comments on our preliminary fishway prescription. We did not receive any public comments on our preliminary prescription.

Also under the MCRP, NOAA Fisheries Service initiated discussions with the Department of the Interior (DOI) and the applicant, PPL Maine, LLC (PPL) to ensure consistency between the agencies' preliminary prescriptions. NOAA Fisheries Service's preliminary prescription as filed on November 29, 2004 was fundamentally identical to that filed by DOI, with three minor additions.

First, NOAA Fisheries Service included language reserving authority for the Medway (P-2666) and West Enfield (P-2600) to be consistent with Attachment A of the MPA as discussed below. No comments have been made to these and, therefore, changes are not necessary.

Second, DOI submitted language to reserve authority at Veazie (P-2403), Milford (P-2534), and Stillwater (P-2712) consistent with the MPA, as follows:



“Authority is reserved by the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce under Section 18 of the Federal Power Act consistent with the Lower Penobscot River Multiparty Settlement Agreement.”
(Assuming agreement by the Secretary of Commerce)

NOAA Fisheries Service filed similar language, reserving authority to be consistent only with Attachment A of the MPA. Attachment A specifically outlines fish passage requirements agreed to in the MPA. In discussions under the MCRP, DOI confirmed our understanding of Attachment A and agreed that, as submitted, the reservation of authority specific to Attachment A is consistent with the intent of DOI's preliminary prescription. Therefore, NOAA Fisheries Service believes that its preliminary prescription is consistent with DOI's prescription, and it submits that preliminary prescription herein without change as its final modified prescription.

Lastly, NOAA Fisheries included in the preliminary prescription language for a process prescription. That process prescription was as follows:

“Integral to its development of fishways, PPL shall develop a plan to monitor the effectiveness of all the facilities and flows provided pursuant to the articles of this license that will enable the “efficient, timely, and safe” passage of diadromous fish migrating upstream and downstream. The plan shall include (1) a description of the criteria and a process that will be used to determine if “efficient, timely, and safe” passage of Atlantic salmon, American shad, alewife, blueback herring, and American eel utilizing fishways has been achieved, and (2) a process for evaluating operational modifications for American eel are necessary to achieve “efficient, timely, and safe” passage of American eel. The process for determining “efficient, timely, and safe” passage will include input and consultation with the resource agencies. In so doing, the licensee will utilize biological indicators, such as escapement and recruitment, for each species, to assess whether passage for all diadromous species of concern is “efficient, timely, and safe.” The plan shall include a goal for upstream and downstream passage of each species of concern, a goal for minimizing migratory delay, and a goal for the survival (immediate and delayed) of upstream and downstream migration. Results of these monitoring studies, in addition to results from the monitoring process for all diadromous species, shall be submitted to the participating resource agencies and shall provide a basis for recommending future structural or operational changes at the project.”

The intent of the process prescription was to establish a long-term monitoring process with specific criteria to ensure that all fish passage facilities and operations function properly to accomplish stated diadromous fish restoration goals for the lower Penobscot River. Through subsequent discussions, both DOI and PPL have confirmed their understanding that the commitments, agreements, and obligations contained in our

additional preliminary process prescription filed with the Commission are included in Attachment A to the MPA. In a letter dated February 28, 2005, PPL further reinforced its commitment to coordinate fully with NOAA Fisheries Service and fulfill the commitments outlined in the preliminary process language contained in NOAA Fisheries Service's preliminary prescription. Given this understanding and commitment, NOAA Fisheries Service does not need to include the process prescription as a specific license article issued by the Commission for Veazie, Stillwater, or Milford projects.

The preliminary fishway prescription modifications are substantively similar to the preliminary fishway prescription originally provided in 1995. Differences between the two relate directly to the continued efforts of DOI and the U.S. Fish and Wildlife Service (USFWS) in negotiating the MPA. NOAA Fisheries Service relies on an extensive administrative record developed by DOI, hereby incorporated by reference, to fully support the agency's actions under the Federal Power Act.

The Department of Commerce, through NOAA Fisheries Service, hereby modifies its preliminary prescription submitted on November 29, 2004 in a manner that maintains consistency with fish passage requirements outlined in the MPA. Specifically, we reaffirm the preliminary prescription as our final modified prescription with the only change being that the process prescription for referenced projects may be omitted, as explained above.

NOAA Fisheries Service hereby reaffirms its support for the restoration goals of the Lower Penobscot River Multiparty Settlement Agreement (MPA). Although not a signatory to the MPA, we believe the prospective fish passage measures - if the option for dam purchase is exercised - will greatly benefit many aquatic species within the watershed. NOAA Fisheries Service will continue to work with the USFWS, PPL, and the Penobscot Partners to ensure the restoration effort achieves its full potential.

If you have any questions concerning this filing, please contact Mary Colligan (978-281-9116) or Peter Colosi (978-281-9332).

Sincerely,

Patricia A. Kurkul
Regional Administrator

cc: Service List

Submission Contents

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APPENDIX C

KEY EMAIL COMMUNICATIONS

Patricia B. McIlvaine

From: Jeff Murphy [Jeff.Murphy@noaa.gov]
Sent: Tuesday, January 04, 2011 5:18 PM
To: Patricia B. McIlvaine
Subject: Re: Species Protection Plans for Orono and Stillwater Project

Hello Pat - I expect a new recovery plan for Atlantic salmon to be issued this spring. As the new plan has yet to be issued, I cannot confirm whether the Orono and Stillwater Species Protection Plans will be consistent with the recovery plan. Also, I have not yet received a complete draft of the Species Protection Plan. Thanks, Jeff.

> Mr. Murphy

>

> As I need to be very careful in not making any assumptions when conducting
> my assessments of projects seeking LIHI certification, I would like to
> confirm the following with you:

>

> a) Is the November 2005 Final Recovery Plan for the Gulf of Maine DPS
> Atlantic Salmon the most current version?

>

> b) Will the Species Protection Plan being developed for the Orono and
> Stillwater Projects be in compliance with the current Recovery Plan for
> the Gulf of Maine DPS Atlantic Salmon?

>

> Thanks for your continued support.

>

> Pat McIlvaine

>

>

>

Pat McIlvaine | Project Manager

>

> Wright-Pierce | Water, Wastewater & Infrastructure Engineers
> www.wright-pierce.com

>

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Jeff Murphy
NOAA's National Marine Fisheries Service
17 Godfrey Drive - Suite One
Orono, Maine 04967
Tel: 207-866-7379
Fax: 207-866-7342
Email: Jeff.Murphy@noaa.gov

Patricia B. McIlvaine

From: Jeff Murphy [jeff.murphy@noaa.gov]
Sent: Tuesday, December 14, 2010 1:04 PM
To: Patricia B. McIlvaine
Cc: 'fred_seavey@fws.gov'
Subject: Re: Question son Orono and Stillwater Hydro projects
Attachments: Orono.doc; Stillwater.doc

Hello Pat - Please see my responses below. Thanks, Jeff.

On 12/9/2010 3:31 PM, Patricia B. McIlvaine wrote:

Gentleman

As I have mentioned to both of you in my brief telephone conversations with you, I am the independent reviewer for the Low Impact Hydropower Institute (LIHI) for the three hydropower projects on the Penobscot River for which Black Bear Hydro LLC (BBHP) is seeking LIHI certification as a "low impact" facility. The three Projects are Stillwater, Orono and Medway. All three are incorporated into the Lower Penobscot Multiparty Settlement Agreement dated June 2004. While I may have some additional questions as my review progresses, the following are my current questions, primarily related to Orono and Stillwater. To facilitate your response, I have attached the current licenses for both Orono and Stillwater.

1) Please confirm whether or not your agency has officially issued a FPA Section 18 Mandatory Fish Prescription for the Orono Project. The FERC license for Orono dated 12/08/05 states in Paragraph (E), that the license is subject to the prescriptions submitted by both USDI and USDC under FPA Section 18 as defined in Appendices B and C respectively. However Article 402 also states that this FPA Section 18 prescription authority is "reserved" for both USDI and USDC. As it does not seem typical to both include a mandatory prescription for fishways and reserve the authority to do so, I wanted to obtain your opinion/thoughts as to why both instruments have been included.

Yes, NMFS filed a Section 18 fishway prescription at Orono. See attached for explanation of reservation language.

2) I have the same question on Stillwater...basically please confirm whether or not your agency has officially issued a FPA Section 18 Mandatory Fish Prescription for this Project. The FERC License amendment dated 04/18/05 discussion includes reference to fishway prescriptions from both USDI and USDC, and FERC includes fish way "requirements" in Articles 405, 406 and 408, but Article 409 specifically reserves prescription authority for USDI. Again, I wanted to obtain your opinion/thoughts on the official position on whether or not a Section 18 prescription has been issued.

Yes, NMFS filed a Section 18 fishway prescription at Stillwater. See attached letter for explanation of reservation language.

3) I understand that BBHP is working with both agencies on a species protection plan for the Atlantic Salmon and shortnose sturgeon, that addresses both Projects, and that a draft of the plan is expected to be issued to you for review and comment this month. Is there a target date or official deadline by which this plan is expected to, or must be, finalized and approved? To date, has there been cooperation on the part of BBHP in this activity?

BBHP is working on developing a species protection plan for Atlantic salmon and shortnose sturgeon.

12/14/2010

BBHP filed a preliminary draft of the species protection plan last month. Its my understanding that BBHP plans to have a draft of the plan this month.

4) Have either of you had an opportunity to review the draft report submitted by BBHP on their 2010 Downstream Fish Passage effectiveness testing for smolt? If so, can you share with me your thoughts on the findings?

I have quickly reviewed the report. NMFS will file formal comments next month.

5) This question is specific to Fred: You provided a series of recommendations on the Study Plan to test the efficiency of the downstream fish passage facility in a letter dated July 8, 2009. (see attached) It does not appear that all of your recommendations were adopted in the final study plan. Does the final plan that was used cause you any concern about the validity of the study that was performed?

If it is easier for you to respond by telephone my direct line is 207-798-3785. .

Thank you for your time.

Pat McIlvaine

Pat McIlvaine | Project Manager

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J

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930-2298

March 21, 2005

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Re: Modified Prescription for Veazie (P-2403), Stillwater (P-2712), Milford (P-2534),
Medway (P-2666) and West Enfield (P-2600) Projects

Dear Ms. Salas:

On November 29, 2004, the Department of Commerce, through NOAA Fisheries Service, filed its preliminary fishway prescription modification with the Federal Energy Regulatory Commission (Commission) pursuant to Section 18 of the Federal Power Act for the Veazie (P-2403), Stillwater (P-2712), Milford (P-2534) projects and reservation of authority to prescribe fishways at the Medway and West Enfield Projects on the Penobscot River, Maine. The preliminary prescriptions were consistent with the actions of the Lower Penobscot River Basin Multiparty Settlement Agreement (MPA) submitted to the Commission on June 25, 2004.

Consistent with the Mandatory Conditions Review Process (MCRP), NOAA Fisheries Service has solicited comments on our preliminary fishway prescription. We did not receive any public comments on our preliminary prescription.

Also under the MCRP, NOAA Fisheries Service initiated discussions with the Department of the Interior (DOI) and the applicant, PPL Maine, LLC (PPL) to ensure consistency between the agencies' preliminary prescriptions. NOAA Fisheries Service's preliminary prescription as filed on November 29, 2004 was fundamentally identical to that filed by DOI, with three minor additions.

First, NOAA Fisheries Service included language reserving authority for the Medway (P-2666) and West Enfield (P-2600) to be consistent with Attachment A of the MPA as discussed below. No comments have been made to these and, therefore, changes are not necessary.

Second, DOI submitted language to reserve authority at Veazie (P-2403), Milford (P-2534), and Stillwater (P-2712) consistent with the MPA, as follows:



“Authority is reserved by the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce under Section 18 of the Federal Power Act consistent with the Lower Penobscot River Multiparty Settlement Agreement.”
(Assuming agreement by the Secretary of Commerce)

NOAA Fisheries Service filed similar language, reserving authority to be consistent only with Attachment A of the MPA. Attachment A specifically outlines fish passage requirements agreed to in the MPA. In discussions under the MCRP, DOI confirmed our understanding of Attachment A and agreed that, as submitted, the reservation of authority specific to Attachment A is consistent with the intent of DOI’s preliminary prescription. Therefore, NOAA Fisheries Service believes that its preliminary prescription is consistent with DOI’s prescription, and it submits that preliminary prescription herein without change as its final modified prescription.

Lastly, NOAA Fisheries included in the preliminary prescription language for a process prescription. That process prescription was as follows:

“Integral to its development of fishways, PPL shall develop a plan to monitor the effectiveness of all the facilities and flows provided pursuant to the articles of this license that will enable the “efficient, timely, and safe” passage of diadromous fish migrating upstream and downstream. The plan shall include (1) a description of the criteria and a process that will be used to determine if “efficient, timely, and safe” passage of Atlantic salmon, American shad, alewife, blueback herring, and American eel utilizing fishways has been achieved, and (2) a process for evaluating operational modifications for American eel are necessary to achieve “efficient, timely, and safe” passage of American eel. The process for determining “efficient, timely, and safe” passage will include input and consultation with the resource agencies. In so doing, the licensee will utilize biological indicators, such as escapement and recruitment, for each species, to assess whether passage for all diadromous species of concern is “efficient, timely, and safe.” The plan shall include a goal for upstream and downstream passage of each species of concern, a goal for minimizing migratory delay, and a goal for the survival (immediate and delayed) of upstream and downstream migration. Results of these monitoring studies, in addition to results from the monitoring process for all diadromous species, shall be submitted to the participating resource agencies and shall provide a basis for recommending future structural or operational changes at the project.”

The intent of the process prescription was to establish a long-term monitoring process with specific criteria to ensure that all fish passage facilities and operations function properly to accomplish stated diadromous fish restoration goals for the lower Penobscot River. Through subsequent discussions, both DOI and PPL have confirmed their understanding that the commitments, agreements, and obligations contained in our

additional preliminary process prescription filed with the Commission are included in Attachment A to the MPA. In a letter dated February 28, 2005, PPL further reinforced its commitment to coordinate fully with NOAA Fisheries Service and fulfill the commitments outlined in the preliminary process language contained in NOAA Fisheries Service's preliminary prescription. Given this understanding and commitment, NOAA Fisheries Service does not need to include the process prescription as a specific license article issued by the Commission for Veazie, Stillwater, or Milford projects.

The preliminary fishway prescription modifications are substantively similar to the preliminary fishway prescription originally provided in 1995. Differences between the two relate directly to the continued efforts of DOI and the U.S. Fish and Wildlife Service (USFWS) in negotiating the MPA. NOAA Fisheries Service relies on an extensive administrative record developed by DOI, hereby incorporated by reference, to fully support the agency's actions under the Federal Power Act.

The Department of Commerce, through NOAA Fisheries Service, hereby modifies its preliminary prescription submitted on November 29, 2004 in a manner that maintains consistency with fish passage requirements outlined in the MPA. Specifically, we reaffirm the preliminary prescription as our final modified prescription with the only change being that the process prescription for referenced projects may be omitted, as explained above.

NOAA Fisheries Service hereby reaffirms its support for the restoration goals of the Lower Penobscot River Multiparty Settlement Agreement (MPA). Although not a signatory to the MPA, we believe the prospective fish passage measures - if the option for dam purchase is exercised - will greatly benefit many aquatic species within the watershed. NOAA Fisheries Service will continue to work with the USFWS, PPL, and the Penobscot Partners to ensure the restoration effort achieves its full potential.

If you have any questions concerning this filing, please contact Mary Colligan (978-281-9116) or Peter Colosi (978-281-9332).

Sincerely,

Patricia A. Kurkul
Regional Administrator

cc: Service List

Scott Hall

From: Jeff Murphy [Jeff.Murphy@noaa.gov]
Sent: Tuesday, May 25, 2010 8:37 AM
To: Scott Hall
Cc: Fred_Seavey@fws.gov; Steve Shepard; Gordon Russell
Subject: Re: Species Protection Plan Development - Black Bear Hydro Partners, LLC

Scott - I can confirm that BBHP has initiated the process to develop a Species Protection Plan for Atlantic salmon at the Orono, Stillwater, and Medway projects.

I'm presently available to meet on June 3, 4, 8, and 10. Thanks, Jeff.

On 5/24/2010 2:26 PM, Scott Hall wrote:

Fred and Jeff,

As we recently discussed, Black Bear Hydro Partners, LLC (BBHP) plans to submit applications to the Low Impact Hydro Institute for certification of the Orono, Stillwater and Medway hydroelectric projects. For purposes of documenting our recent and on-going work with you to develop a species protection plan (SPP) for BBHP's hydroelectric projects we would appreciate it if you could simply reply to this email confirming that we are in the process of working with you to develop the SPP.

On a related note, we would also like to check with you on your availability to meet again to discuss and finalize the outline for the SPP that we have been working on. So, please also let me know what you have for availability over the next couple of weeks to get together for an hour or two as necessary to complete this next step. Again, once we finalize the outline we will continue preparation of the initial draft SPP for discussion.

Thanks for providing the confirmation requested above. Talk to you soon.

Scott

Scott D. Hall

Manager of Environmental Services

Black Bear Hydro Partners, LLC

Davenport Street, PO Box 276

Milford, ME 04461

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