

APPLICATION REVIEW FOR
LOW IMPACT HYDROPOWER INSTITUTE
CERTIFICATION
of the
BLACK BEAR HYDRO PARTNERS
MEDWAY HYDROELECTRIC PROJECT NO. 2666



JANUARY 17, 2011

Application Reviewer: Patricia McIlvaine

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

BLACK BEAR HYDRO PARTNERS

MEDWAY HYDROELECTRIC PROJECT NO. 2666

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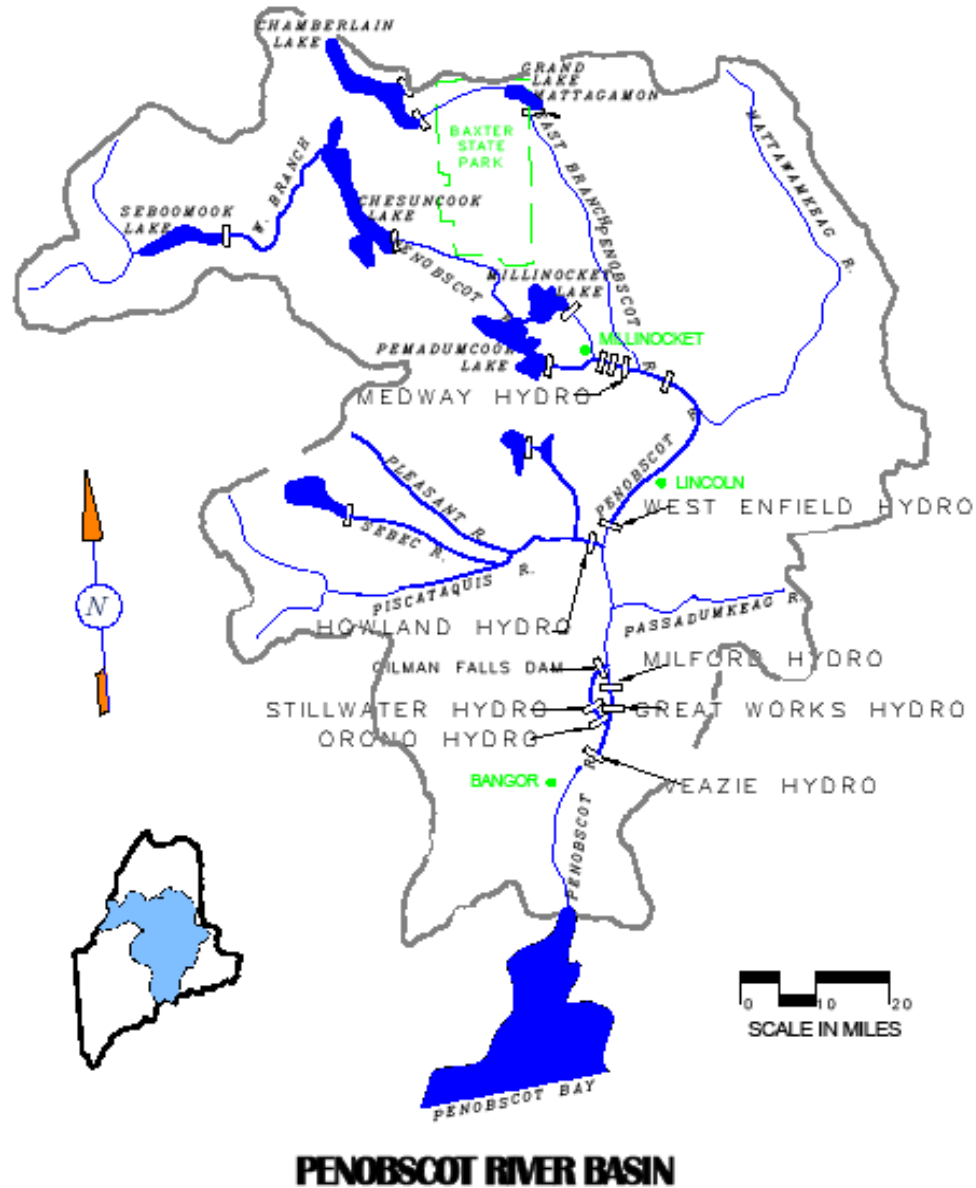
BLACK BEAR HYDRO PARTNERS LLC PROJECT NO. 2666

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 Medway Project. The Medway Project, located on the West Branch of the Penobscot River ("River") in Medway, Penobscot County, Maine, is currently licensed by the Federal Energy Regulatory Commission (FERC) as Project Number 2666. 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, upstream of Seboomook 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 Medway Project is the lowermost dam located on the West Branch of the Penobscot River, just before it joins the main stem of the Penobscot River. 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 (Medway, Orono, West Enfield, Milford and Stillwater) in the Penobscot River Basin (See Figure 1), which were all purchased from PPL Maine, LLC. The FERC license for the Medway project transferred ownership on September 17, 2009. The Medway 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 Medway, West Enfield, Milford, Stillwater 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 Medway Project, which commenced initial commercial operations in 1923, has a gross nameplate generating capacity of 3.44 MW

The Medway Project consists of a 343-foot-long concrete gravity dam surmounted by 5.75 foot-high flashboards, a 64-foot-long concrete gravity forebay wall, a powerhouse containing five generating units with a total installed capacity of 3.44 MW, an approximate 144-foot-long underground transmission line, and appurtenant facilities. The Project impoundment covers an estimated 101 acres and has an estimated gross storage capacity of 1,010 acre-feet. Land area occupied by the non-reservoir features described above is estimated at 0.4 acres. Approximately 82.4 acres of land is contained in a 200-foot zone extending around the impoundment. BBHP owns a very small portion of this area.

1.2 Regulatory History

Past Licensing

The original FERC license for the Medway Project was issued to Bangor Hydroelectric Company (Bangor Hydro) in 1979, which expired in 1999. A renewed license was approved on March 29, 1999 for a 30-year term. A new Water Quality Certificate was issued on December 23, 1998. The Medway license was transferred to Penobscot Hydro LLC, which later became PPL Maine, LLC, (PPL Maine) in October 2000. The Medway Project was subsequently purchased by Black Bear Hydro Partners (BBHP) and the license transferred on September 17, 2009.

Settlement Agreement

Relicensing and pending appeals for several of the hydropower projects owned by PPL Maine in the Penobscot River Basin, including the Medway Project, occurred over a number of years, from 1998 through 2003. After extensive studies, consultations and legal challenges, the discussions 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 Medway 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) could not technically be a party to the settlement nor issue Section 18 prescriptions as they did not reserve their Section 18 authority during the initial Medway relicensing process. Their fish passage recommendations issued pursuant to the amended license are discussed further under Section 2.3, *Criteria C - Fish Passage and Protection*.

The Settlement Agreement provided the Penobscot River Restoration Trust (PRRT), a non-profit organization, with 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 states 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 USF&WS determines this to be a feasible option to achieve acceptable fish passage, 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 option of 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 BBHP in the river basin through enhancements at other hydropower facilities in the basin, including the Medway Project. As discussed further below, BBHP has received approval and has already increased generation at Medway and two other Projects in the Basin through one-foot headpond increases, and has the opportunity to add generating capacity at the Medway, Stillwater and Orono Projects, as well as at the Ellsworth Project, located outside the Basin. The added generation resulting from the headpond level increase at the Medway Project is included in BHHP's application for LIHI certification. The applicant reports intentions to add potential future capacity of 0.7 MW from installation of additional generating equipment

in the existing powerhouse at the Medway Project, however this is not part of this LIHI certification application.

Current License

On June 25, 2004 an application was filed with FERC to modify the existing Medway 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 December 17, 2004, the MDEP issued a Water Quality Certificate (WQC) under Section 401 of the Clean Water Act, adopting the applicable provisions of the Settlement Agreement and other requirements including water levels and flows, continued operation of upstream and downstream eel passage, a Contingent Mitigation Fund, limits of approval, and compliance with all applicable laws.

On April 18, 2005, FERC issued its Order modifying and approving amendment of the Medway Project license. The 2004 WQC was made part of this Order.

FERC also incorporated the provisions of the Contingent Mitigation Fund of Attachment B of the Settlement Agreement into the license as Article 410, and via incorporation of the WQC. Under the Contingent Mitigation Fund, the contributions due to the effects of the headpond increases would be \$1,000 per year (adjusted annually in accordance with the Consumer Price Index) for the term of the license. 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, no extensions or temporary license condition variances or condition deviations have been requested or reported for environmental, cultural or recreational issues related to this Project. As such, it appears that BBHP has demonstrated conscientious attention to the environmentally related issues associated with the Medway 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

Two comment letters were received by the LIHI on BBHP's application for certification for the Medway Project. The Penobscot Nation Department of Natural Resources 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 Medway Project plays in the overall program, although it does not specifically address their position on certification of the Medway Project. Subsequent discussions with Laura Rose Day on December 6, 2010, clarified that the PRRT, by policy, does not provide such specific endorsements regarding individual 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. When contacted, Mr. Jeff Reardon, of Trout Unlimited, stated he did not provide a comment letter for the Medway Project as he did for the Orono and Stillwater Projects because he was not familiar enough with the Medway Project to make an assessment about whether LIHI certification is appropriate. 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 Medway 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 2004, and as adopted into Article 402 of the amended FERC license issued in 2005, the Medway Project is to be operated as run-of-river (outflow equals inflow). Also, the impoundment must be maintained within six inches of full pond elevation of 259.3 feet above mean sea level (msl) when the flashboards are in place. The April 18, 2005 FERC Order included use of the existing Operation and Monitoring Plan (which was approved in 2000) 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 issuance of the amended license 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 these 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 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).*

The Medway Project was issued a WQC on December 23, 1998 by the MDEP. This WQC included provisions for run-of-river operation, maintenance of headpond levels within 6 inches of full pond elevation, installation and monitoring of upstream and downstream eel passage. An additional requirement was monitoring of polychlorinated biphenyl (PCB) and mercury levels in fish and impoundment and downstream sediments. (As identified later, this is not related to known water quality impairment, as the waters in this reach are not categorized as 303(d) listed waters under the Clean Water Act.) When contacted on this sampling issue, Mr. Dana Murch, of MDEP, stated that these contaminant sampling requirements were incorporated into the WQC in response to concerns raised by the PIN, and due to data obtained during 1996 environmental studies that indicated some higher levels of mercury in fish from the Medway impoundment, than those from upstream East Branch waters. (Note: As a public health notice, Fish Consumption Advisories are issued for all Maine waters due to atmospheric deposition of mercury throughout the state, and in some cases, other contaminant concerns.) Mr. Murch

confirmed the WQC's statement that uncertainty about whether the project's impounded waters are exacerbating the issue is the basis for the fish sampling requirement.

After consultation with the resource agencies, and specifically the PIN, sediment testing was determined to no longer be needed. A request by BBHP to limit the sampling to just fish was approved by the MDEP on May 17, 2005. The fish sampling was conducted in 2005 with the report issued in 2006. As there was some indication that higher than typical mercury levels were found within a few samples, the sampling was repeated in 2010, as required by the 2005 WQC. PCB testing was determined to no longer be needed, based on the 2005 sampling. The results of the 2010 mercury testing are expected in early 2011. BBHP contracts with MDEP to perform and report on the sampling as part of MDEP's state-wide program.

The only requirement in the WQC regarding this issue is that as long as the dam "is or may be contributing to elevated levels of mercury", that the sampling must be conducted every five years. No other possible actions are denoted. Mr. Murch stated that until the 2010 results are available, which he expects to be in April 2011, that he cannot comment on whether or not the presence of the dam/impounded waters are in fact causing a problem, triggering the requirement for additional periodic sampling, or if the sampling can be discontinued.

Contact was made with Mr. John Banks of the PIN to obtain his insight into the issue. He reported that the PIN's past fishery expert, who would have such information, has passed away and his replacement has not yet started employment.

In addition to limiting the sampling to fish only, the May 17, 2005 WQC also incorporated the terms of the Settlement Agreement, which included modified headpond limits. 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, would result in affected waters remaining suitable for designated uses including aquatic life, and meeting applicable water quality standards.

The waters of the West Branch of the Penobscot River affected by the Medway Project, including the impoundment, are classified as Class C. Class C 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 Medway impoundment as a result of the change in water level.

Review of the MDEP 2010 Integrated Water Quality Monitoring and Assessment Report (i.e., the Clean Water Act Sec. 303(d) list) did not list the waters of the West Branch of the Penobscot River in the vicinity of the Medway Project as being impaired (i.e. Category 5 Waters).

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 West 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.

The Project is in compliance with mandated fishway requirements pursuant to the 2005 amended FERC license, the WQC and the Settlement Agreement. In a letter dated June 17, 1998, the USF&WS supported the applicant's proposed construction and effectiveness monitoring of upstream and downstream eel passage, which were incorporated into the 1999 FERC license. Article 401 of this license, which remained unchanged in 2005, reserves FPA Section 18 fishway prescription authority for the USF&WS. NOAA Fisheries did not reserve its prescription authority in the 1999 licensing proceedings, although they did request reservation of its authority to prescribe fishways consistent with Attachment A of the Settlement Agreement in letters dated November 29, 2004 and March 21, 2005. (A copy of the 2005 letter is contained in Appendix B.) In other words, they were in agreement with the fish passage facilities already required at the Project. Although, this reservation was not adopted in the amended license by FERC as NOAA Fisheries did not participate in the 1999 license proceedings, the license did state that future actions by NOAA Fisheries may be available through the standard license re-opener clause.

Pursuant to the 1999 license, and through consultation with USF&WS, PIN, MDEP, MDMR and MDIF&W, as required by the license, both upstream and downstream eel passage facilities were constructed at the Medway facility. The design and effectiveness study plan of these passages, which incorporated resource agency comments, was approved by FERC on June 23, 2004. The Settlement Agreement, and amended WQC dated December 17, 2004, required continued operation of the existing passage facilities. These requirements were incorporated into the 2005 FERC license.

Consultation with both Mr. Fred Seavey of the USF&WS and Mr. Steve Timpano of MDIF&W indicated that the state is interested in maintaining the land-locked salmon fishery that currently exists within the Medway impoundment and adjacent waters. Mr. Timpano reported that the most current version (July 2009) of Operation Plan for Restoration of Anadromous Fisheries excludes the West Branch of the Penobscot River from active restoration focus. Mr. Seavey noted that the USF&WS is respecting this position, and thus did not recommend anadromous fish passage requirements. Mr. Murphy of NOAA Fisheries stated that as the restoration efforts of the GOM DPS of Atlantic Salmon continues, that NOAA Fisheries may seek to expand the range of the species to the West Branch of the Penobscot River, which would be available through the FERC license re-opener clause mentioned above.

Consultation with all resource agencies having interest in fisheries resources were supportive of the actions undertaken by BBHP in support of fisheries restoration programs.

C. Fish Passage and Protection – The Project is in compliance with Mandatory Fish Passage Prescriptions issued after December 31, 1986, for upstream and downstream passage of catadromous fish, as incorporated into the Settlement Agreement, WQC and FERC license. No passage requirements have been issued by Resource Agencies for anadromous or riverine fisheries. Prescription authority has also been reserved for the USF&WS. 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 Medway 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.

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 Medway Project.

Article 409 of the 1999 FERC license which includes requirements dealing with "Use and Occupancy" of project lands that 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 1999 Final Environmental Assessment (FEA) prepared for the relicensing of the Medway Project found that the bald eagle and peregrine falcon are the only federally listed species in the project area. The bald eagle 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 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. The peregrine falcon is believed to use the project area during migration periods according to the FEA. The peregrine falcon has also been delisted from the federal list but remains as an endangered species on Maine's state list.

Studies have shown that anadromous salmonids do not appear to occur in the area of the Medway Project. Likewise, shortnose sturgeon, a federally listed species, is not expected to move upstream of the falls at the Milford dam, which is located over 40 miles downstream of the Medway dam.

The 1999 FEA does not specifically discuss state-listed species. Consultation with Mr. Steve Timpano of MIF&W, confirmed that the peregrine falcon is not expected to be negatively impacted by the operation of the Medway Project, as it is a transient in the area.

E. Threatened and Endangered Species Protection – There is one state endangered species and no federally Endangered Species Acts present in the Facility area. Project operations will not negatively affect the single listed 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.

As noted in FERC's 1999 license, by letter dated December 20, 1996, the Maine State Historic Preservation Officer concurred with the studies performed by the applicant that there are no properties in the Medway area that are of historic, architectural or archaeological significance. This same finding was reported by the SHPO in its letter dated March 14, 2004, during the license amendment proceedings. To address the potential for new discovery of culturally significant resources, Article 406 of the FERC license requires BBHP to consult with the SHPO and Tribal Historic Preservation Officer (THPO) if any archaeological or cultural sites are discovered during ground-disturbing or land-clearing activities. If any are found, a Cultural Resource Management Plan would be developed. No such activities have occurred to date per communication with Mr. Scott Hall of BBHP. Recent consultation with Ms. Bonnie Newsom, THPO 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 407 of the 1999 FERC license required the recreational facilities previously approved for the Medway Project, which included a hand-carried boat launch on the north shore of the West Branch, a canoe portage and appurtenant facilities and associated warning/informational signs. Article 408 requires issuance of completed Form 80 recreational reports to FERC, USF&WS, PIN, NPS and MDOC.

A recent FERC Environmental and Safety Inspection Report dated September 16, 2010 reported that the recreational facilities are well maintained. The most recent FORM 80 recreational report was issued to FERC and the listed agencies on March 11, 2009. Consultation with the PIN indicated no issues with the recreational features at the Medway Project. Several attempts were made to reach Ms. Eickenberg of MDOC regarding the FERC Form 80 reports, but she could not be reached. Given the length of time that the recreational features have been in place, and the absence of recreational enhancements incorporated into the Settlement Agreement, no concerns on these features is expected from the MDOC.

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 Medway Project.

H. Facilities Recommended for Removal – There are no Resource Agency Recommendations for removal of the dam associated with the Facility - FACILITY PASSES.

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 Medway 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 agencies reached through telephone consultation provided consistent positive opinions about BBHP's cooperation through the license compliance activities.

In summary, I recommend that the Medway Project be certified as a "low impact hydropower facility" under the criteria established by the LIHI.

This certification does not include modifications to the Medway Project associated with the anticipated installation of new generation capacity within the existing powerhouse. 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 Medway 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, 12/29, 12/30/10 and 1/7/11 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
<p>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 12/2/10. I contacted Mr. Scott Hall on a number of additional occasions via telephone to obtain additional documents applicable to the Medway Project to support the various responses included in the application. Regarding the mercury testing required under the WQC, he stated that the sampling and analysis program is contracted to the MEDEP, as they also conduct the same type of study for their own data collection efforts for fish consumption advisories throughout the state. Scott is expecting the report on the 2010 sampling to be received from the MEDEP in January or February 2011. Emails were limited to requests and responses for licensing and agency documents to support the application.</p>	

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 and 1/7/11
Application Reviewer	Patricia McIlvaine
Persons Contacted	Steve Timpano ME Dept of Inland Fish & Wildlife
Telephone	207-287-5258

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 Medway 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 Medway 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. The peregrine falcon is still a state endangered species, but is only a transient in the area. Project activities would not negatively affect bald eagles or peregrine falcon.

Regarding fisheries issues, he reported that the state is interested in maintaining the land-locked salmon fishery that currently exists for the Medway impoundment and adjacent waters, as documented in the most current version (July 2009) of Operation Plan for Restoration of Anadromous Fisheries which excludes the West Branch of the Penobscot River from active restoration focus.

Finally, he stated that while he is aware of the fish sampling requirements for the Medway project, he could not offer any comments as the issue is handled by the MDEP.

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 call, Mr. Seavey confirmed that USF&WS did not issue a Section 18 fish passage prescription for Medway. However compliance with the requirements identified in the Settlement Agreement would satisfy USF&WS's primary concerns for fisheries restoration for the river basin as a whole, and eel passage at Medway. So far, he is content with the compliance activities undertaken by BBHP at the Medway project. He feels BBHP is generally responsive to their requests and has been good to work with. He commented that no upstream fish passage was recommended for the Medway Project to respect the desires of the MIF&W to protect the land-locked salmon fishery of the West Branch waters.</p>	

Date of Communication	Telephone call on 12/20/10, 1/4 and 1/13/11
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 operational deviations or water quality concerns at the Project. Regarding the fish sampling requirements, Mr. Murch stated that these requirements were incorporated into the WQC in response to data obtained during 1996 environmental studies that indicated some higher levels of mercury in fish from the Medway impoundment than those from upstream East Branch waters. He stated that mercury contamination concerns are associated with atmospheric deposition throughout the state, but that it is uncertain if the issue is being exacerbated by the impounded waters, hence the requirement to sample. He stated that until the 2010 results are available, which he expects to be in April 2010, that he cannot comment on whether or not the presence of the dam/impounded waters are in fact causing a problem.</p>	

Date of Communication	Telephone calls on 12/29/10, 1/12/11 and 1/14/11. Email on 1/14/11.
Application Reviewer	Patricia McIlvaine

Person Contacted	Ms. Katherine Eickenberg Maine Department of Conservation
Telephone	207-287-4963
<p>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 Medway 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. Several attempts were made to discuss her thoughts on the FERC Form 80 reports, but neither return calls or email were received.</p>	

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
<p>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.</p>	

Date of Communication	Telephone calls on 12/20, 22, and 29/10 and 1/7/11
Application Reviewer	Patricia McIlvaine
Person Contacted	Mr. Patrick Keliher Mr. Norm Dube Maine Department of Marine Resources
Telephone	207-941-4453
<p>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.</p>	

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
<p>I asked Mr. Banks about his insight into the fish sampling requirements at the Medway Project and whether he had any concerns regarding the past study findings. He stated that he is not familiar enough with these activities to offer a comment. He also stated that the individual who was the PIN's fishery expert had passed away, and that his replacement has not yet stated employment. Thus, he stated the PIN could not offer any comment on this topic. Regarding recreational issues, he stated that such issues are not a concern at the Medway Project, as evidenced by the fact that they were not incorporated into the Settlement agreement.</p>	

Date of Communication	Telephone 1/7/11 Email 1/13/11
Application Reviewer	Patricia McIlvaine
Person Contacted	Mr. Jeff Reardon Trout Unlimited
Telephone	207-615-9200; jreardon@TU.org
<p>In response to my inquiry, Mr. Reardon stated in his email that the reason he did not submit a comment letter to LIHI for the Medway Project was because he was not familiar enough with the Medway Project to make an assessment about whether LIHI certification is appropriate.</p>	

Date of Communication	Email 1/13/11
Application Reviewer	Patricia McIlvaine
Person Contacted	Mr. Jeff Murphy NOAA Fisheries
Telephone	Jeff.Murphy@noaa.gov
<p>In response to my email inquiry, Mr. Murphy responded by saying that as the restoration efforts of the GOM DPS of Atlantic Salmon continues, that NOAA Fisheries may seek to expand the range of the species to the West Branch of the Penobscot River. His email is contained in Appendix C.</p>	

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

--

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 02, 2010 7:14 AM
To: pbm@wright-pierce.com
Subject: Fwd: BBHP Application for Stillwater, Orono and Medway

Pat, Here's a comment letter and another will follow. Cheers, Fred

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

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

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

8/9/2010

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

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

8/9/2010

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 Multitparty 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

NOAA Fisheries filing modified prescription for Veazie, et al P2403_NOAA_ModPrescrp.doc.....	1-3
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APPENDIX C

KEY EMAIL COMMUNICATIONS

Patricia B. McIlvaine

From: Jeffrey Reardon [JReardon@tu.org]
Sent: Wednesday, January 12, 2011 5:29 PM
To: Patricia B. McIlvaine
Subject: RE: BBHP Medway project LIHI certification

Hi Pat:

Trust me, I'm not shy about opposing certification when I don't think it's appropriate, and if I had substantial concerns about Medway, you'd be hearing from me.

I did not participate in the most recent licensing of the Medway Dam, and frankly don't know enough about its operation and the resources it affects to make an assessment about whether LIHI certification is appropriate.

I am far more familiar with the issues at Orono and Stillwater.

Please note that my reservation about ESA issues at Orono and Stillwater is serious. Development, approval, and compliance with some kind of plan developed with the federal agencies to avoid, minimize, and mitigate for any potential impacts to Atlantic salmon should be a condition of approval.

Jeff

-----Original Message-----

From: Patricia B. McIlvaine [mailto:pbm@wright-pierce.com]
Sent: Wednesday, January 12, 2011 3:56 PM
To: Jeffrey Reardon
Subject: BBHP Medway project LIHI certification

Mr. Reardon

I am the independent reviewer for the Low Impact Hydropower Institute's review of the certification request made by Black Bear Hydro Partners for the Medway, Orono and Stillwater Projects. I see that you have provided comment letters supporting the certification for the Stillwater and Orono Projects, but did not provide one for the Medway Project. While such letters are not required, I am curious as to why you did not.

Do you have any concerns regarding the certification of Medway?

I would appreciate hearing from you on this matter. Please do not hesitate to contact me by email or by calling the number listed below.

Thank you.

Pat McIlvaine

Pat McIlvaine | Project Manager

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

99 Main Street | Topsham, ME 04086
Tel 207.725.8721 x.3785 | Fax 207.729.8414

Patricia B. McIlvaine

From: Jeff Murphy [Jeff.Murphy@noaa.gov]
Sent: Wednesday, January 12, 2011 6:27 PM
To: Patricia B. McIlvaine
Subject: Re: Question on Medway Project #2666

Pat - The Medway Project is located in the GOM DPS of Atlantic salmon. Historically, Atlantic salmon occurred throughout the West Branch of the Penobscot River. As restoration of the species continues, NOAA Fisheries may seek to expand the range of the species to the West Branch. Thank you, Jeff.

> Mr. Murphy

>
> In reviewing the documentation on Back Bear Hydro's Medway Project, including NOAA's letter of March 21, 2005, I see that NOAA sought to reserve its prescription authority also for Medway to be in support of Attachment A of the Settlement Agreement for the Penobscot Projects. I also understand that the FERC did not reserve Section 18 authority for NOAA in the 2004 amended license but stated that any concerns could be addressed through FERC's standard re-opener clause.

>
> Do you have any concerns about the fish passage requirements currently in place for this Project? I understand that the only requirements in the Settlement Agreement and amended license were continued operation and maintenance of the existing up and downstream eel passage facilities. I also understand and that due to the state's interest in preserving the land-locked salmon fisheries upstream of Medway, that no anadromous passage has been recommended by the USF&WS. Are you also in agreement with that position at this time?

>
> Thanks for your assistance.

>
> Pat McIlvaine

>
> _____
> Pat McIlvaine | Project Manager

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

>
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> Serving New England for Over 60 Years

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