

ORIGINAL



Central Maine Power

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North Augusta Office Annex

Environmental and Licensing FAX (207) 626-9633

41 Anthony Avenue, Augusta, Maine 04332
FEDERAL ENERGY REGULATORY COMMISSION
OFFICE OF THE SECRETARY

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August 9, 1994

FEDERAL ENERGY
REGULATORY
COMMISSION

Ms. Lois D. Cashell, Secretary
Federal Energy Regulatory Commission
825 North Capitol Street, N.E., Room 3110
Washington, D.C. 20426

RE: Saco River Environmental Impact Statement
FERC Project Nos. 2528, 2527, 2194, 2531, 2529, 2530, & 11365
Cataract, Skelton, ~~Bar Mills~~, West Buxton, Bonny Eagle, Hiram,
and Swans Falls Projects
Saco River Fish Passage Agreement

Dear Ms. Cashell:

Attached for filing is a copy of the Saco River Fish Passage Agreement. The Agreement has been signed by all parties except the New Hampshire Department of Fish and Game. It is Central Maine Power Company's (CMP) understanding that New Hampshire Fish and Game is reviewing the Agreement with the New Hampshire Attorney General's office and that its signature should be forthcoming. CMP will file a copy of the Agreement with all of the signatures when it is available.

If you have any questions, please contact Frank Dunlap at (207) 621-4469.

Sincerely,

F. Allen Wiley, P.E.
Director, Hydro Operations

FAW/FHD

Attachment

cc: Robert Grieve, FERC
Ron Kokel, FERC
Service List

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FERC DOCKETED

AUG 11 1994

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CERTIFICATE OF SERVICE**Saco River Environmental Impact Statement**

FERC Nos. 2528, 2527, 2194, 2531, 2529, 2530, and 11365
Cataract, Skelton, Bar Mills, West Buxton, Bonny Eagle, Hiram,
and Swans Falls Projects

I, Wendy C. Bley, Manager, Licensing and Environmental Studies for Central Maine Power Company, hereby certify that copies of the foregoing document have been transmitted to the following parties of record:

Eight copies
regular mail,
postage paid to:

Ms. Lois D. Cashell, Secretary
Federal Energy Regulatory Commission
825 North Capitol Street, NE, Room 3110
Washington, DC 20426

One copy
regular mail
postage paid to:

Regional Director
New York Regional Office
Federal Energy Regulatory Commission
19 West 34th Street, Suite 400
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DATE: _____

8/9/94



Wendy C. Bley

SACO RIVER FISH PASSAGE AGREEMENT

May 24, 1994

BACKGROUND AND PARTIES

Beginning on July 21, 1993, Central Maine Power Company hosted a series of meetings to negotiate a consensus plan for fish passage facilities at dams on the main stem of the Saco River for the purpose of assisting in restoring populations of anadromous fish, including Atlantic salmon, American shad, and river herring. The participants in the meetings included Central Maine Power Company (CMP); Swans Falls Corporation; the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Maine Atlantic Sea Run Salmon Commission, the Maine Department of Marine Resources, the Maine Department of Inland Fisheries and Wildlife (collectively herein "Fisheries Agencies"); the Maine Department of Environmental Protection (DEP); the Maine State Planning Office; the cities of Saco and Biddeford (Cities); a coalition of non-governmental conservation organizations including the Saco River Salmon Club, Trout Unlimited, the Maine Council of Trout Unlimited, the Atlantic Salmon Federation, the Maine Council of the Atlantic Salmon Federation, and American Rivers, Inc. (the Coalition); the New Hampshire Department of Fish and Game; the Biddeford-Saco Water Company; and the Maine Energy Recovery Co.

The parties to this agreement include all those listed above as participants, except for the Maine Department of Environmental Protection, Swans Falls Corp., Biddeford-Saco Water District and Maine Energy Recovery Company.

This is a settlement agreement for issues regarding the construction of fish passage facilities at projects currently undergoing licensing proceedings before the Federal Energy Regulatory Commission (FERC), including a license amendment for the Cataract Project (FERC No. 2528), and relicensing of the Skelton (FERC No. 2527) and the Bonny Eagle (FERC No. 2529) projects. In addition, Central Maine Power agrees that it will petition the FERC within 12 months of the effective date of this agreement to amend existing licenses at Bar Mills (FERC No. 2194), West Buxton (FERC No. 2531), and Hiram (FERC No. 2530) to incorporate into the licenses for those projects the applicable terms of this agreement.

On December 7, 1993 the parties agreed to the objectives, principles and specific provisions for each project set forth below. Final acceptance of this agreement is indicated by the signature of the official representative from each party.

The parties agree to the following objectives, principles, terms and provisions for restoring anadromous fish populations and providing fish passage at dams on the Saco River.

OBJECTIVES

Agreement on the following objectives does not mean that all parties agree that achieving all objectives is feasible under all circumstances.

Saco River Fish Passage Agreement
May 24, 1994

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1. There is general agreement that the objective of restoring anadromous fish populations on the Saco River is the establishment of viable, self-sustaining runs of Atlantic salmon, shad and river herring, with optimum utilization of suitable habitat, where possible. Providing passage for salmon above Swans Falls is a long term goal. For shad and river herring, the goal is to provide passage on the main stem of the Saco River only to above Bonny Eagle, and to tributaries below the Hiram Project.¹ The ultimate size of the populations will depend on, among other things, the interaction among species, including wildlife species, and must take into consideration the natural fluctuations in populations from year to year. Other objectives of anadromous fish restoration on the Saco River are to provide for fishing/angling opportunities within the constraints of the resource; to provide other wildlife and ecosystem benefits for predator species; and to provide other non-consumptive benefits.

GENERAL PRINCIPLES

2. For the Fisheries Agencies and the Coalition, permanent trap and truck is not a viable long term management strategy. These groups see trap and truck as a short term means to accommodate upstream migrating fish prior to constructing upstream passage facilities. CMP's position is that long term trap and truck may be the most biologically sound method of providing upstream passage at specific Saco River dams in order to achieve the goal of restoring anadromous fish populations.

3. There is some uncertainty regarding shad's ability to pass multiple barriers. This may affect the ability to restore shad to certain portions of the Saco River, and could affect the timing and design of fishways constructed at Bar Mills, West Buxton and Bonny Eagle.

4. Downstream passage is needed at all dams above which anadromous fish have passed, or have been stocked or trucked. Schedules for constructing permanent downstream passage facilities are specified below for each dam. CMP agrees to provide interim downstream passage (e.g. controlled spills during downstream migration periods, installation of temporary downstream fish passage facilities or other feasible measures) necessary to allow downstream fish passage at each dam above which anadromous fish have been stocked or trucked. Such efforts shall continue until permanent downstream fish passage facilities are installed and operational in accordance with this agreement.

5. A comprehensive fish passage plan should be biologically defensible and, from CMP's perspective, be more cost effective than constructing upstream passage facilities in the order of relicensing.

¹ Restoration goals also include providing upstream passage at dams on tributaries that flow into the Saco River above Bonny Eagle, such as the Ossipee and Little Ossipee Rivers, but those dams are not within the scope of this agreement.

Saco River Fish Passage Agreement
May 24, 1994

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GENERAL PRINCIPLES

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Saco River Fish Passage Agreement
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6. The rate of growth of anadromous fish populations above Skelton is somewhat uncertain, making it necessary to conduct periodic assessments to determine the need for, design and schedule for implementing fish passage measures at Bar Mills, West Buxton, Bonny Eagle, Hiram and Swans Falls. Assessment criteria ("Criteria") will be established in advance as outlined below. Criteria may address the following factors, among others: spawning escapement, trap and truck capacity and mortality, habitat utilization, size of runs, fallback below one or more dams, rate of increase in populations, stock origin of run, etc.

The parties agree that the state and federal Fisheries Agencies will develop by January 1, 1995 the Criteria to be used in future assessments to determine the need for, timing and design of interim and permanent upstream passage facilities at Bar Mills, West Buxton, Bonny Eagle, Hiram and Swans Falls. The Criteria will be developed in consultation with the parties to this agreement, using a consensus process to endeavor to achieve acceptance by all parties. If, after meetings between the parties with a facilitator, a consensus can not be achieved, the Fisheries Agencies' Criteria shall be used to determine the schedule for construction of upstream fish passage facilities above Skelton.

7. A final design of any permanent upstream or downstream fish passage facility must be approved in writing by an authorized official of the Department of the Interior (U.S. Fish and Wildlife Service) and/or the Department of Commerce (National Marine Fisheries Service) pursuant to Section 18 of the Federal Power Act, as amended, before the dam owner is obligated to construct that facility at its project site. Additionally, CMP will consult with the Maine Department of Marine Resources, Maine Atlantic Sea Run Salmon Commission, Maine Department of Inland Fisheries and Wildlife, and the Maine Department of Environmental Protection regarding the final design of fish passage facilities, as may be necessary under applicable state law.

CMP will conduct effectiveness studies of all newly constructed upstream and downstream fish passage facilities at its project sites in accordance with a study plan to be developed in consultation with the state and federal Fisheries Agencies listed above.

8. Complete restoration of Atlantic salmon to the Saco River watershed would require stocking of juvenile fish above Hiram and Swans Falls dams (in New Hampshire). Stocking of salmon in New Hampshire is dependent on, among other things, an inter-agency agreement on stocking between the relevant state and federal Fisheries Agencies, and an adequate supply of suitable Atlantic salmon stocks. All parties will use their best efforts to expedite such agreements as are necessary for restoring Atlantic salmon to the New Hampshire portion of the Saco River basin.

CATARACT PROJECT

9. The parties agree that the numbers of shad and river herring that passed at Cataract East and West Channel in 1993 exceeded expectations. The size of the stock below the dam was

Saco River Fish Passage Agreement
May 24, 1994

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also higher in 1993 than expected. Salmon were also passed successfully in 1993, with numbers consistent with expectations. The facilities at East and West Channel were well built.

10. All parties agree that the fish lift/lock concept proposed by CMP is an acceptable alternative for upstream fish passage at the Springs and Bradbury Dams. CMP and the Cities believe that the fish lift/lock concept is the preferred alternative to dam removal (which is politically difficult and has uncertain mitigation costs) and Denil fishways (which are more expensive to construct). The Cities believe that removal or lowering of the dams at Springs and Bradbury is not an acceptable fish passage option. Should CMP seek to remove or lower the dams at Springs and Bradbury, the Cities may pursue any available legal rights they may have.

Assuming that the lift/lock concept proves to be feasible and less expensive than Denil fishways, all parties agree to the following schedule for construction. The 1994 season will be used for telemetry, engineering, and flow studies. Construction of upstream passage facilities at Springs or Bradbury would begin in 1995 with passage facilities to be operational by May 1, 1996. Construction of the upstream facility at the other dam will be completed and operational by May 1, 1997, or sooner.

Because there are no generation facilities at Springs and Bradbury dams, the Fisheries Agencies agree that there is no foreseeable need to construct permanent downstream fish passage facilities at those dams.

11. CMP agrees to trap and truck (or arrange for the trapping and trucking) of Atlantic salmon, shad and river herring from the East Channel fish lift in accordance with the specifications of the state and federal Fisheries Agencies. Depending on the numbers of returning fish, some salmon may be trucked around Bonny Eagle from East Channel as early as 1994.

SKELTON PROJECT

12. CMP agrees that full, permanent upstream and downstream fish passage facilities at Skelton will be designed to pass salmon, shad and river herring, and will be operational by May 1, 1998, or within three years of receipt of a new license for Skelton, whichever occurs later. The returning run of shad and river herring from the 1993 spawning season is expected in 1998.

13. All parties agree that a fish lift with trap and truck facilities is the current favored design for Skelton. Once the Skelton facilities are operational and fish are present at Skelton in sufficient numbers, trapping and trucking of salmon, shad, and river herring is expected to move to Skelton from Cataract East Channel. The trap and truck program will be paid for by CMP, but decisions on the number of fish to be trucked and the destinations in Maine and New Hampshire will be made by the appropriate state and federal Fisheries Agencies.

Saco River Fish Passage Agreement
May 24, 1994

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BAR MILLS, WEST BUXTON, BONNY EAGLE, HIRAM AND SWANS FALLS PROJECTS

14. CMP agrees to construct interim, permanent or, under appropriate circumstances, both interim and permanent upstream passage facilities, at Bar Mills, West Buxton, Bonny Eagle and Hiram according to the schedule and conditions below.
- a) The state and federal Fisheries Agencies will conduct the first assessment in 1999 according to the Criteria described in paragraph 6 above to determine the identity of, the need for, the design and the timing of the first upstream fish passage facility to be constructed. The assessment will be conducted in consultation with the parties to this agreement using a consensus process (which shall include meetings between the parties with a facilitator) to endeavor to achieve acceptance by all parties. Subsequent, similar assessments will also be conducted under these same guidelines in 2003, 2007 and 2011.
 - b) The Fisheries Agencies will use the assessments in their determination of anadromous fish restoration needs, including such fishways as may be prescribed by the Department of Interior (U.S. Fish and Wildlife Service) and/or Department of Commerce (National Marine Fisheries Service) pursuant to Section 18 of the Federal Power Act, as amended, and such other measures as may be necessary under applicable state law.
 - c) The first upstream passage facility will be required to be operational no earlier than May 1, 2005. Construction and operation of the first facility may occur later than May 1, 2005 if an assessment determines that the facility is not needed until a later date.
 - d) The identity of, need, design and schedule for any additional upstream passage facilities will be determined by the assessments, but in no event will upstream passage facilities at or above the Bar Mills project be required to be completed less than two years apart, except for Swans Falls which may be scheduled for simultaneous completion with Hiram.
15. CMP agrees to construct permanent downstream passage facilities at Bonny Eagle within 2 years of receipt of the Bonny Eagle license, and at Bar Mills and West Buxton within 2 years of receipt of the license amendment for downstream passage at each facility. CMP will apply to the FERC for the license amendments at Bar Mills and West Buxton, if necessary, within 12 months of execution of this agreement by all parties.
16. The need for permanent downstream passage for salmon at Hiram and Swans Falls hinges on the presence of juvenile or adult fish. This could result from the annual production stocking* of juvenile salmon or trucking of adults and their subsequent natural reproduction. Either event (stocking or trucking) is dependent on the participation of appropriate state and federal Fisheries Agencies in Maine and New Hampshire including the New Hampshire Fish

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and Game Department and the U.S. Forest Service. Permanent downstream passage will be provided at each of the two dams no more than two years from commencement of annual production stocking of salmon above such dam.

* "annual production stocking" is defined as scheduled annual stocking based on an inter-agency agreement and a written management plan by the Fisheries Agencies with the specific objective of establishing a continuous run of returning fish. It does not include intermittent, unplanned or one time stockings, including, for example, stocking for studies of habitat utilization, growth rates, etc.

17. The current license exemption application for Swans Falls calls for upstream passage facilities to be completed no later than 2011. This schedule could be modified according to the terms and conditions in Swans Falls' license exemption to require passage at Swans Falls sooner, or to allow a delay if, among other things, passage facilities are not constructed at Hiram before 2011.

ADDITIONAL CONSIDERATIONS

18. This agreement shall be effective when signed by the appropriate authorities representing Central Maine Power Company, the Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the Maine Atlantic Sea Run Salmon Commission, the Maine State Planning Office, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the New Hampshire Department of Fish and Game, Saco River Salmon Club, Trout Unlimited, Maine Council of Trout Unlimited, Atlantic Salmon Federation, Maine Council of the Atlantic Salmon Federation, American Rivers, Inc., the City of Saco, the City of Biddeford, and when reviewed and acknowledged without objection by the Maine Department of Environmental Protection.

19. This agreement shall terminate, unless extended by the parties, on December 31, 2022 or upon the expiration of the renewed licenses of the Skelton or Bonny Eagle projects, whichever is later.

20. This agreement shall bind and inure to the benefit of the successors and assigns of the signing parties.

21. The parties will endeavor to resolve in good faith any dispute that may arise in carrying out this agreement, using a consensus process which shall include meetings between the parties with a facilitator. The intent of the parties is to maintain the spirit of cooperation and understanding that led to this agreement, even as circumstances change (including changes in applicable law) or new information is acquired.

22. Nothing in this agreement shall be construed as obligating the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the U.S. Forest Service, the State of Maine, or the State of New Hampshire, their officers, agents or employees, to expend any funds in

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excess of appropriations or other amounts authorized by law.

We, the undersigned, having the authority to bind our respective parties, agree to the terms of this agreement, and will represent and support this agreement in applicable proceedings before the Federal Energy Regulatory Commission and other regulatory bodies:

Central Maine Power Co.

[Signature] June 28, 1994
Its President Date

Maine Atlantic Sea Run Salmon
Commission

[Signature] June 28, 1994
Its Commissioner Date

Maine Department of Inland
Fisheries and Wildlife

[Signature] June 28, 1994
Its Director Date

Maine Department of Marine Resources

[Signature] 6.28.94
Its Commissioner Date

U.S. Fish and Wildlife Service

[Signature] 6/28/94
Its Supervisor, Washington Field Office Date

Maine State Planning Office

[Signature] 6/28/94
Its Director Date

National Marine Fisheries Service

[Signature] 6/28/94
Its Acting Director Date

Saco River Salmon Club

[Signature] 6/28/94
Its Vice President Date

Trou Unlimited

[Signature] 6/28/94
Its President (CEO) Date

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May 24, 1994

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Atlantic Salmon Federation

[Signature] 6/28/94
Its Asst. U.S. Director Date

American Rivers, Inc.

Its _____ Date

Maine Council, Atlantic Salmon Federation

[Signature] 6/28/94
Its Pres. Date

Maine Council, Trout Unlimited

[Signature] 6/28/94
Its Chairman Date

City of Saco

[Signature] 6/28/94
Its Mayor Date

City of Biddeford

[Signature] 6/28/94
Its Mayor Date

New Hampshire Department
of Fish and Game

Its _____ Date

[Signature]

[Signature]

Its _____ Date

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Atlantic Salmon Federation

American Rivers, Inc.

Its

Date

Its

Kevin J. Coyle
President

Date

7-28-94

Maine Council, Atlantic Salmon Federation

Maine Council, Trout Unlimited

Its

Date

Its

Date

City of Saco

City of Biddeford

Its

Date

Its

Date

New Hampshire Department
of Fish and Game

Its

Date
