

150 FERC ¶ 62,185
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

S.D. Warren Company

Project No. 2984-042

ORDER ISSUING NEW LICENSE

(Issued March 23, 2015)

INTRODUCTION

1. On March 29, 2002, S.D. Warren Company (S.D. Warren or licensee) filed, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA),¹ an application for a new license to continue operation and maintenance of the Eel Weir Project No. 2984 (Eel Weir Project or project). The project's authorized capacity being licensed is 1.8 megawatts (MW). The project is located at the outlet of Sebago Lake on the Presumpscot River in Cumberland County, Maine.² The project does not occupy federal land.
2. As discussed below, this order issues a new license for the project.

BACKGROUND

3. The Commission issued the original license for the project in 1984, and the license expired on March 31, 2004.³ Since then, S.D. Warren has operated the project under annual licenses pending the disposition of its new license application.
4. On August 2, 2002, the Commission issued a public notice that was published in the *Federal Register* accepting the application for filing and setting October 2, 2002, as the deadline for filing motions to intervene and protests.⁴ The U.S. Department of the

¹ 16 U.S.C. §§ 797(e) and 808 (2012).

² The Presumpscot River is a navigable waterway of the United States. *Central Maine Power Company*, 36 F.P.C. 967, 968 (1966). Therefore, section 23(b)(1) of the FPA, 16 U.S.C. § 817(1)(2012), requires the project to be licensed.

³ 26 FERC ¶ 62,241 (1984). The license was effective April 1, 1962, and terminated 20 years from the first day of the month in which the license was issued.

⁴ 67 *Fed. Reg.* 51559-51560 (August 8, 2002).

Interior (Interior) and the Maine State Planning Office (Maine SPO); American Rivers and Friends of the Presumpscot River; Friends of Sebago Lake; Stephen M. Kasprzak; Sebago Lake Marina; Town of Frey, Maine; Sebago Lake Landowners/Users Coalition; Douglas C. Fray and Northwest Shores Association; Sebago Pines Property Owners and Road Users Association; Kettle Cove Marina; Sebago Harbor Association; and the Maine Public Employees for Environmental Responsibility filed timely motions to intervene.⁵ State Representative Janice E. Labrecque and Richardson's Boat Yard and Marina filed late motions to intervene, which were granted.⁶

5. On June 5, 2003, the Commission issued a public notice that was published in the *Federal Register* indicating that the application was ready for environmental analysis and setting August 4, 2003, as the deadline for filing comments, recommendations, terms and conditions, and fishway prescriptions.⁷ Interior (on behalf of the U.S. Fish and Wildlife Service (FWS)), Maine SPO (on behalf of the Maine Department of Marine Resources and the Maine Department of Inland Fisheries and Wildlife (Maine DIFW)), Maine Department of Environmental Protection (Maine DEP), Mr. Kasprzak, Friends of Sebago Lake, Charles M. Frechette, and Sebago Lake Landowners/Users Coalition filed comments and recommendations. S.D. Warren filed reply comments on September 17, 2003.

6. A draft Environmental Assessment (draft EA) was prepared by Commission staff and issued on July 11, 2005, analyzing the impacts of the proposed project and alternatives to it. Fourteen entities, agencies, and interest groups and 42 individuals filed comments on the draft EA.⁸ A final EA was prepared by Commission staff and issued on November 29, 2005.

7. On May 26, 2011, S.D. Warren filed an amendment to its license application,⁹ proposing changes to project operations and lake level management, as well as several other measures (described in more detail below).

⁵ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2014).

⁶ See Secretary's notice issued June 18, 2014 (unpublished).

⁷ 68 *Fed. Reg.* 34941-34942 (June 11, 2003).

⁸ See Final EA at 16.

⁹ S.D. Warren filed additional information related to its amendment on June 6, (continued ...)

8. On June 9, 2011, the Commission issued a public notice of the amendment proposal and established July 11, 2011, as the deadline for filing comments on the proposal.¹⁰ Maine Department of Conservation (Maine DOC), Maine DIFW, Maine DEP, Mr. Frechette, Harvey Dutil, Mr. Kasprzak, Neil Garston, and Friends of Sebago Lake filed timely comments in response to the notice.¹¹ S.D. Warren filed reply comments on July 25, 2011, June 4, 2012, and October 26, 2012.

9. A supplemental EA analyzing the impacts of the amendment proposal and alternatives to it was prepared by Commission staff and issued on April 8, 2014. S.D. Warren, Maine DEP, Maine State Historic Preservation Commission, and 16 individuals filed comments on the supplemental EA. Substantive comments on the supplemental EA are discussed below. The interventions, comments, recommendations, and conditions have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

A. Project Area

10. The Eel Weir Project is located at Sebago Lake near the cities of Standish and Windham, in Cumberland County, about 14 miles northwest of Portland, Maine. The Presumpscot River originates at the outlet of Sebago Lake and flows in a southeasterly direction for about 25 miles before emptying into the Atlantic Ocean at Casco Bay.

B. Project Facilities

11. The Eel Weir Project consists of the 12-mile-long, 28,771-acre Sebago Lake with a useable storage volume of 177,120 acre-feet at a normal maximum elevation of 266.65 feet mean sea level (msl). Although Sebago Lake is a natural lake, a 1,350-foot-long, 22-foot-high dam controls Sebago Lake between elevations 248.0 feet msl and 266.65 feet msl. Flow from Sebago Lake passes through a screened canal intake gatehouse into a 4,820-foot-long earthen power canal. Flow in the power canal passes into the bypassed reach through a 40-foot-long canal waste gate structure with three minimum flow gates

2011.

¹⁰ 76 *Fed. Reg.* 35213 (June 16, 2011).

¹¹ After the public notice period ended, more than 60 comment letters were filed.

located just downstream of the canal intake gatehouse. Flow in the power canal also passes downstream through a 69-foot-wide by 32-foot-long powerhouse that houses three turbine-generators with a total installed capacity of 1.8 MW. Flows discharged from the powerhouse enter a 35-foot-long tailrace that leads to the Presumpscot River.

12. The project also includes a 3.5-mile-long, 11-kilovolt (kV) transmission line connecting the powerhouse to S.D. Warren's Dundee Project No. 2942 powerhouse for distribution to S.D. Warren's paper mill located in Westbrook, Maine. A more detailed project description is contained in ordering paragraph (B)(2).

13. The project creates a 6,700-foot-long bypassed reach. Minimum flows are released to the bypassed reach over the spillway or through the power canal's three minimum flow gates. There are no recreation facilities at the project.

C. Project Boundary

14. The existing project boundary encloses the dam, embankments, intake gatehouse, powerhouse, tailrace, Sebago Lake at elevation 267.0 feet msl, and the power canal at elevation 262.65 feet msl. The project boundary does not enclose the project's transmission line as discussed further below.

D. Current Project Operation

15. The Eel Weir Project is operated in a store-and-release mode to achieve the lake elevations and flow releases required by a Commission-approved Lake Level Management Plan (LLMP)¹² and a 1992 order requiring minimum flows in the Eel Weir bypassed reach.¹³ The LLMP specifies that Sebago Lake be managed to achieve target elevations of: (1) 266.65 feet msl (spillway crest) no sooner than May 1 and no later than the second week in June; (2) 265.17 feet msl (approximately 1.5 feet below the spillway crest) on August 1; (3) 265.0 feet msl on September 1 and 263.3 feet msl on October 15; (4) 262.5 feet msl on November 1; and (5) 263.5 feet msl on January 1. The LLMP also requires that Sebago Lake be drawn down to a target elevation of 261.0 feet msl or lower between November 1 and January 1 in 2 out of every 9 years to enhance sand accretion at the Lake's beaches. The lake levels required by the LLMP are intended to protect aquatic

¹² 79 FERC ¶ 61,064 (1997), *order on reh'g* 80 FERC ¶ 61,207 (1997), and as amended in 92 FERC ¶ 62,180 (2000), *order on reh'g* 94 FERC ¶ 61,034 (2001).

¹³ 58 FERC ¶ 62,006 (1992).

resources and minimize erosion along the shoreline, while providing adequate conditions for recreation and boating.

16. The currently-required minimum bypassed reach flows are: (1) 25 cfs from November 1 through March 31; (2) 75 cfs from April 1 through June 30; (3) 50 cfs from July 1 through August 31; and (4) 75 cfs from September 1 through October 31 to protect water quality, aquatic resources, and angling opportunities in the Presumpscot River.

17. The project's average annual generation is approximately 12,300 megawatt-hours (MWh).

E. Proposed Operation and Environmental Measures

18. S.D. Warren proposes to operate the project using a "flow-based regime" whereby it would maintain target discharges that vary by time of year, instead of trying to meet specific target lake levels as it does under the LLMP. For example, when Sebago Lake is between elevations 266.65 feet msl and 262.0 feet msl, S.D. Warren would release a total project discharge¹⁴ of: (1) 408 to 1,000 cfs from June 16 through October 15; (2) 500 to 1,000 cfs from October 16 through November 15; and (3) 500 to 1,167 cfs from November 16 through June 15. When Sebago Lake is above elevation 266.65 feet msl, S.D. Warren would release a total project discharge up to 1,500 cfs. When Sebago Lake is below elevation 262.0 feet msl, S.D. Warren would release a 408 cfs total project discharge. Under average inflow conditions, S.D. Warren's proposed operation would increase flood storage and decrease lake levels throughout most of the year when compared to current operation under the LLMP.¹⁵

19. In addition to the proposed flow-based regime, S.D. Warren proposes to: (1) discontinue drawing Sebago Lake down to a target elevation of 261.0 feet or lower between November 1 and January 1 in 2 out of every 9 years; (2) limit releases to the bypassed reach to 75 cfs, except when lake elevations exceed 266.65 feet msl; (3) discharge up to 1,000 cfs (the maximum capacity) through the powerhouse during high flow events to reduce releases to the bypassed reach; (4) continue to release the required minimum bypassed reach flows of 25 cfs from November 1 to March 31, 75 cfs from April 1 to June 30, 50 cfs from July 1 to August 31, and 75 cfs from September 1 to

¹⁴ Total project discharge would be the sum of flow released from the powerhouse and the flow released into the bypassed reach.

¹⁵ See supplemental EA at 88-90.

October 31; (5) continue to operate an existing lake level gage; and (6) continue to cooperate and coordinate with upstream pond owners to manage flood flows.¹⁶

20. S.D. Warren also proposes to: (1) consult with resource agencies on the need for upstream and downstream American eel passage at the Eel Weir dam; (2) evaluate opportunities for establishing a conservation easement on lands around the bypassed reach in consultation with the town of Windham as part of a Land for Maine's Future program; (3) plan and design any changes to current land use(s) to be consistent with the aesthetic character of the project area; (4) protect and mitigate project-related effects on archeological sites, in consultation with the Maine Historic Preservation Office (Maine SHPO); and (5) protect project structures that have been determined to meet National Register of Historic Places criteria in consultation with the Maine SHPO. Lastly, S.D. Warren proposes to discontinue required wetlands monitoring because it believes that wetlands monitoring data collected to date show little change in wetlands from 1998 to 2002.

SUMMARY OF LICENSE REQUIREMENTS

21. As summarized below, this license, which authorizes 1.8 MW of renewable energy, requires a number of measures to protect and enhance fisheries resources, water quality, recreation, and cultural resources at the project.

22. To protect geology and soils, aquatic resources, and to improve public boat access, the license requires the conditions of the Maine DEP water quality certification (discussed further below).

23. To protect water quality, aquatic resources, and angling opportunities in the Presumpscot River, the license requires S.D. Warren to release a minimum flow into the bypassed reach of 75 cfs from November 1 through March 31 and 125 cfs from April 1 through October 31, and to develop a minimum flow release plan. To determine the effects of the minimum flows on coldwater refugia¹⁷ in the bypassed reach, the license requires a bypassed reach monitoring plan.

¹⁶ According to the operating parameters for Sebago Lake approved by order amending LLMP issued on August 28, 2000, 92 FERC ¶ 62,180 (2000), every effort will be made by the Maine Department of Conservation to delay or reduce drawdown flows from the upstream Brandy Pond and Long Lake through the state-owned Songo Lock and Dam.

¹⁷ Coldwater refugia are areas within a river that is colder than the surrounding (continued ...)

24. To manage flood flows at the project, the license requires S.D. Warren to develop a protocol for coordinating project operation with the upstream owner of Brandy Pond and Long Lake located on the Songa River.

25. To enhance and maintain recreation opportunities at the project, the license requires S.D. Warren to develop and implement a land use and recreation management plan (LRMP) to: (1) guide how project lands will be managed, including considerations for maintaining the aesthetic character of project lands; (2) maintain angling access to the Eel Weir bypassed reach; and (3) provide improved public boat access to Sebago Lake.

26. To protect cultural resources, the license requires S.D. Warren to implement a Programmatic Agreement (PA) that requires development of a Historic Properties Management Plan (HPMP).

WATER QUALITY CERTIFICATION

27. Under section 401(a)(1) of the Clean Water Act (CWA),¹⁸ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.¹⁹

28. On March 19, 2002, S.D. Warren applied to the Maine DEP for water quality certification for the Eel Weir Project. Each year from March 19, 2002, until January 25, 2011, S.D. Warren withdrew and refiled its water quality certification application (for a total of nine times). On August 30, 2011, the Maine DEP issued certification for the Eel Weir Project that includes 12 conditions which are set forth in Appendix A of this order and incorporated into the license by ordering paragraph (D).²⁰ Four of the conditions are general or administrative and are not discussed.²¹

waters, usually due to input from a spring or colder tributary. Coldwater refugia can provide important habitat for trout and salmon during the summer.

¹⁸ 33 U.S.C. § 1341(a)(1) (2012).

¹⁹ 33 U.S.C. § 1341(d) (2012).

²⁰ The Maine Board of Environmental Protection (Maine Board) affirmed the
(continued ...)

Certification Conditions

29. Conditions 1 and 2 require the licensee to manage lake levels and project releases according to a flow-based regime consistent with S.D. Warren's proposal.

30. Specifically, condition 1 requires that lake levels be managed between 262.0 and 266.65 feet msl, with lake levels above or below this range triggering increased or decreased flow releases, respectively, and with a goal of achieving a level of 266.0 feet between May 1 and June 15 each year. Condition 1 also requires a plan to monitor lake levels.

31. Condition 2 requires S.D. Warren to: (1) release a minimum total project flow of 270 cfs at all times except between June 1 and September 30 when the minimum total project flow release will be 408 cfs to facilitate spillage at the downstream Dundee and Gambo Dams²² to maintain dissolved oxygen in the Presumpscot River; (2) release a minimum flow of 75 cfs into the bypassed reach downstream of the dam at all times; and (3) develop a minimum flow monitoring plan.

32. Condition 3 requires S.D. Warren to limit flow releases from the project to 1,000 cfs or less during the landlocked Atlantic salmon spawning season (i.e., October 16 through November 15).

water quality certification and denied the appeals filed by Mr. Frechette of Sebago Lake Marina and Douglas Watts. The Maine Supreme Judicial Court denied Mr. Watts' appeal of the Maine Board's decision. *See Watts v. Board of Environmental Protection*, 2014 ME 91, 97A.3d 115.

²¹ The general conditions state that: (1) any variations from proposed plans are subject to review and approval by the Maine DEP; (2) the licensee must comply with all federal, state, and local licenses, permits, and conditions; (3) the certification shall be effective concurrent with the date of the new license; and (4) if part of the certification is declared to be unlawful by a reviewing court, the remainder of the certification shall remain in effect.

²² *See S.D. Warren Company, Order Issuing New License*, 105 FERC ¶ 61,010 (2003). Flow releases at the Eel Weir Project are needed to meet the required flow releases at the downstream Dundee and Gambo Dams to maintain dissolved oxygen levels in the Presumpscot River.

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33. Conditions 4 and 5 require the licensee to install and operate upstream and downstream eel passage facilities within 2 years of license issuance. The licensee must study the effectiveness of the facilities, conduct the approved effectiveness studies, submit the results of the studies, and implement any changes to the facilities required by Maine DEP.

34. Condition 6 reserves the right of Maine DEP to require the licensee to install fish passage facilities to pass anadromous and/or resident fish species upstream and downstream through the project area.

35. Condition 7 reserves the right of Maine DEP to require the licensee to modify lake level management to ensure that project operation does not cause or contribute to a decline in Sebago Lake water quality.

36. Condition 8 requires the licensee to improve public boat access to Sebago Lake after conducting a study and preparing a report.

37. The certification includes conditions that require S.D. Warren to file plans and reports with Maine DEP, notify Maine DEP of modifications to project operations, and implement unspecified long-term changes to project operations or facilities based on new information or results from studies or monitoring without Commission review or approval. Therefore, Article 401 of this license requires the licensee to file, for Commission approval, plans required by the certification conditions, file reports with the Commission, notify the Commission of planned and unplanned deviations from license requirements, and file amendment applications, as appropriate.

COASTAL ZONE MANAGEMENT ACT

38. Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),²³ the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state CZMA agency concurs with the license applicant's certification of consistency with the state's CZMA program, or the agency's concurrence is conclusively presumed by its failure to act within 6 months of its receipt of the applicant's certification.

39. By letter filed November 14, 2011, the Maine SPO notified S.D. Warren that the Eel Weir Project is not within the Maine designated coastal zone and that no consistency certification is required.

²³ 16 U.S.C. § 1456(c)(3)(A) (2012).

SECTION 18 FISHWAY PRESCRIPTION

40. Section 18 of the FPA²⁴ provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

41. By letter filed August 1, 2003, Interior requested that the Commission reserve authority to prescribe fishways. Consistent with Commission policy, Article 406 of the license reserves the Commission's authority to require fishways that may be prescribed by Interior for the Eel Weir Project.

THREATENED AND ENDANGERED SPECIES

42. Section 7(a)(2) of the Endangered Species Act of 1973²⁵ requires federal agencies to ensure their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

43. In a letter filed November 1, 2011, the U.S. Fish and Wildlife Service stated that no federally listed threatened or endangered species or critical habitat are known to occur in the project area. In the supplemental EA, staff concluded that issuing a license would not affect federally listed threatened or endangered species or critical habitat.²⁶ Therefore, no further action under the Endangered Species Act is required.

NATIONAL HISTORIC PRESERVATION ACT

44. Under section 106 of the National Historic Preservation Act (NHPA)²⁷ and its implementing regulations,²⁸ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (National Register), defined as historic properties, and afford the

²⁴ 16 U.S.C. § 811 (2012).

²⁵ 16 U.S.C. § 1536(a) (2012).

²⁶ See supplemental EA at 28.

²⁷ 16 U.S.C. § 470 *et seq.* (2012).

²⁸ 36 C.F.R. Part 800 (2014).

Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

45. The Eel Weir Project, including the dam, canal, forebay, powerhouse, and tailrace, is eligible for inclusion in the National Register as a historic district because it is associated with events that have made significant contributions to the broad patterns of our history in the context of industry and engineering.²⁹ Additionally, two surveys conducted in 2001 and 2002 by S.D. Warren within the project area identified 47 archaeological sites potentially eligible for inclusion in the National Register and concluded that none of the archaeological sites are located in the in the project's Area of Potential Effect (APE).³⁰

46. To protect listed and eligible historic properties that could be affected by project-related activities, the Commission executed a Programmatic Agreement (PA) with the Maine SHPO on September 14, 2005, and invited S.D. Warren and a number of entities to concur with the stipulations of the PA.³¹ The U.S. Bureau of Indian Affairs and the Passamaquoddy Tribe at Pleasant Point Reservation concurred. The PA requires S.D. Warren to prepare an Historic Properties Management Plan (HPMP), in consultation with the Maine SHPO, that contains the principles and procedures to address the continued use, and protection of, historic properties; mitigation of unavoidable adverse effects; compliance with laws and regulations of human remains; and discovery of previously unidentified resources to ensure that any adverse effects on known and unknown

²⁹ The term "eligible for inclusion in the National Register" includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria at 36 C.F.R. Part 60 (2014).

³⁰ The project's APE is co-terminus with the project boundary (i.e., lands around Sebago Lake and its tributaries to an elevation of 267.0 feet msl, the 6,700-foot-long bypassed reach, and the properties occupied by the project works). *See* supplemental EA at 239 through 243.

³¹ The entities included the Passamaquoddy Tribe, Pleasant Point Reservation; Passamaquoddy Tribe, Indian Township Reservation; Houlton Maliseet Band of Indians; Penobscot Indian Nation; Aroostook Band of Micmac Indians; U.S. Bureau of Indian Affairs; Maine DEP; and Friends of Sebago Lake.

potential historic properties and archaeological resources are satisfactorily resolved over the term of any new license issued for the project. Execution of the PA demonstrates the Commission's compliance with section 106 of the NHPA. Article 408 requires S.D. Warren to implement the PA and to file its HPMP, prepared in consultation with the Maine SHPO, with the Commission for approval within one year of license issuance.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES PURSUANT TO SECTION 10(j) OF THE FPA

47. Section 10(j) of the FPA³² requires the Commission, when issuing a license, to include conditions based on recommendations submitted by federal and state fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act³³ to “adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)” affected by the project.

48. In response to the June 5, 2003 public notice that the project was ready for environmental analysis, Interior³⁴ filed five recommendations under section 10(j). On August 5, 2003, Maine SPO filed eleven recommendations under section 10(j), but those recommendations were subsequently withdrawn.³⁵

49. One of the five recommendations filed by Interior was determined to be outside the scope of section 10(j) and is discussed in the next section.

50. In the final EA, staff adopted Interior's recommendation to develop and implement a lake water level and stream flow monitoring plan. The plan is required in the license by Articles 401 and 404.

51. In the draft EA, Commission staff made an initial determination that Interior's remaining recommendations may be inconsistent with the comprehensive planning

³² 16 U.S.C. § 803(j)(1) (2012).

³³ 16 U.S.C. §§ 661 *et seq.* (2012).

³⁴ Interior filed recommendations on August 1, 2003.

³⁵ *See* Maine DEP's August 30, 2011 water quality certification at 3 (“the terms and conditions in the attached water quality certification represent the State's sole, official recommendations regarding the subject application for new license, superseding all preliminary recommendations by individual State agencies.”).

standard of section 10(a)(1) and the public interest standard of section 4(e) of the FPA. Those recommendations were: (1) release 200 cfs to the bypassed reach from April 1 to October 31, and 115 cfs from November 1 to March 31; (2) limit Sebago lake fluctuation to no more than 2 feet from April 1 to December 15, and no more than 3 feet from December 16 to March 31; and (3) develop a shoreline management plan (SMP) to protect riparian resources. By letter dated July 29, 2005, Commission staff advised Interior of its preliminary determination and attempted to resolve the apparent inconsistency. By letter dated September 14, 2005, Commission staff notified Interior that a section 10(j) meeting to attempt to resolve the remaining issues would be held in the city of Hallowell, Maine.

52. Commission staff held a section 10(j) meeting on September 22, 2005.³⁶ At the meeting, the inconsistency regarding Sebago Lake level fluctuations was resolved. During the meeting, Interior clarified that the purpose of the recommendation was to protect riparian areas, and Interior and Commission staff agreed that an SMP, or similar measure, could be used to address Interior's riparian habitat protection goals. In the supplemental EA, staff recommended an LRMP that would protect riparian habitat. Article 407 of the license requires an LRMP, similar to staff's recommendation and discussed further below.

53. The two unresolved recommendations from Interior are discussed below.

Bypassed Reach Minimum Flows

54. Interior recommended minimum flows in the bypassed reach of 200 cfs from April 1 through October 31 and 115 cfs from November 1 through March 31. In the draft EA,³⁷ Commission staff concluded that, although Interior's recommended flows would improve fish habitat for desirable species, they would also improve habitat for smallmouth bass, which is considered undesirable under Maine DIFW's management goals for landlocked Atlantic salmon and brook trout. Additionally, staff concluded that Interior's flows would eliminate the coldwater refugia in the bypassed reach. Therefore, in the draft EA, Commission staff recommended minimum flows of 50 cfs from November 1 to March 31, 100 cfs from April 1 to June 30, 75 cfs from July 1 to August 31, and 100 cfs from September 1 to October 31.

³⁶ A summary of the 10(j) meeting was issued on October 11, 2005.

³⁷ See draft EA at 211.

55. At the 10(j) meeting, Interior reiterated the fish habitat improvements that would occur under its recommended bypassed reach flow regime, stated that it did not consider the presence of smallmouth bass to be a threat to salmonid management goals, and emphasized that flows higher than Commission staff recommended in the draft EA could still be compatible with protecting the coldwater refugia. In the final EA,³⁸ staff revised its recommended minimum flows to 125 cfs from April 1 through October 31 and 75 cfs from November 1 through March 31, concluding that this flow regime would provide the best balance between cost, availability of aquatic habitat, protection of coldwater refugia, and angler suitability. Staff recommended the same minimum flows in the supplemental EA.³⁹ This license requires the staff-recommended minimum flows for the bypassed reach, as well as monitoring to determine the effect of the minimum flows on the coldwater refugia in the bypassed reach.

56. For the reasons discussed above, in accordance with FPA section 10(j)(2)(A), Interior's recommended bypassed reach minimum flows are inconsistent with the comprehensive planning standard of sections 4(e) and 10(a) of the FPA. In accordance with section 10(j)(2)(B) of the FPA, the measures required by the license, including the minimum bypassed reach flows required by Article 402, and the bypassed reach monitoring plan required by Article 404, will adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources affected by this project.

Shoreline Management Plan

57. Interior recommended that S.D. Warren develop an SMP to protect riparian resources around Sebago Lake. At the 10(j) meeting, Interior discussed the need to identify critical habitat areas and land ownership for implementing specific protection measures. In addition, Interior recommended that the Commission exert authority over unregulated activities such as temporary boat docks within the project boundary.

58. After the section 10(j) meeting held on September 22, 2005, Commission staff recommended an SMP in the final EA⁴⁰ that would include conservation easements,

³⁸ See final EA at 237-238.

³⁹ See supplemental EA at 275.

⁴⁰ See final EA at 228-229. In the draft EA, Commission staff recommended an SMP that would include conservation easements and buffer zones. The SMP would require S.D. Warren to establish a buffer zone on project lands within 200 feet of the normal high water elevation around Sebago Lake and identify additional lands within 200
(continued ...)

buffer zones, mapping Sebago Lake's shoreline, and a permitting program for unregulated activities to protect recreational opportunities and shoreline habitat at the project. Commission staff revised its recommended SMP in the final EA, because the installation and use of temporary docks and seasonal water supply lines could disturb the shoreline areas of Sebago Lake and adversely affect riparian and other sensitive habitats.

59. In the 2011 amendment to its application, S.D. Warren indicated that there is no need for an SMP or a permit program because it would duplicate existing state and local shoreline permitting and zoning requirements. In the supplemental EA,⁴¹ Commission staff reassessed this issue and concluded that because there is no evidence in the record of significant shoreline effects associated with shoreline use or construction of structures, a comprehensive SMP is not needed and would not be worth the cost. Instead, Commission staff recommended that S.D. Warren develop and implement an LRMP to, among other things, guide how lands within the project boundary will be managed.

60. As recommended by staff in the supplemental EA, Article 407 of this license requires S.D. Warren to develop and implement an LRMP to guide how project lands will be managed. The LRMP also requires S.D. Warren to develop and implement plans to maintain angling access to the bypassed reach and improve public boat access to Sebago Lake (discussed further below). In addition, Article 409 of this license allows S.D. Warren to regulate project land and water for specific uses and occupancies, including landings, boat docks, or similar structures, to enhance the project's scenic, recreational, and other environmental values.

61. For the reasons discussed above, in accordance with FPA section 10(j)(2)(A), Interior's recommended SMP is inconsistent with the comprehensive planning standard of sections 4(e) and 10(a) of the FPA. In accordance with section 10(j)(2)(B) of the FPA, the measures required by the license, including the LRMP required by Article 407, and the regulation of use and occupancy on project lands and waters required by Article 409, will adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources affected by this project.

SECTION 10(a)(1) OF THE FPA

feet of the normal high water elevation around Sebago Lake that may warrant protection. See draft EA at 213-214.

⁴¹ See supplemental EA at 278-279.

62. Section 10(a)(1) of the FPA⁴² requires that any project for which the Commission issues a license be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

63. Interior made one recommendation under section 10(j) that is not a specific measure to protect, mitigate damages to, or enhance fish and wildlife. Consequently, this recommendation is considered under the broad public-interest standard of section 10(a)(1).⁴³

64. Interior recommended that S.D. Warren monitor recreation use at the project and file a report with the Commission. In the supplemental EA,⁴⁴ Commission staff concluded that Interior's recommendation is consistent with the Commission's FERC Form No. 80 reporting requirement which requires licensees to file a report of recreation use with the Commission every 6 years throughout the license term.⁴⁵ This program should be sufficient to address the adequacy of recreation facilities and the need for additional facilities to meet future demand at the project and no additional monitoring is necessary to address Interior's recommendation.

COMMENTS ON THE SUPPLEMENTAL EA

65. As stated above, S.D. Warren, Maine DEP, and other entities and interested individuals filed comments on the supplemental EA issued on April 8, 2014. The comments are addressed below.

A. Proposed Flow-Based Regime Operation

66. In the supplemental EA, staff recommended that S.D. Warren operate the project in accordance with the current Commission-approved LLMP from May 15 to October 15 to maintain higher Sebago Lake levels for recreational boating during the late-summer

⁴² 16 U.S.C. § 803(a)(1) (2012).

⁴³ See supplemental EA at 282-283.

⁴⁴ See supplemental EA at 279-280.

⁴⁵ See 18 C.F.R. § 8.11 (2014).

and early fall periods, and from October 16 through May 14, operate the project in a flow-based regime as proposed by S.D. Warren.

67. S.D. Warren states that the proposed flow-based regime is an attempt to balance conflicting uses, i.e., higher lake levels for recreational uses and more flow releases to benefit downstream aquatic resources. Maine DEP indicated that the staff recommendation to operate the project under a lake-level based plan during the spring, summer, and early-fall months (May 15 through October 15), will decrease flows in the Presumpscot River during later summer and could cause non-attainment of state water quality standards for dissolved oxygen (DO) standards and result in the loss of sensitive organisms such as stoneflies and mayflies.

68. Mr. Frechette recommends modifying the staff-recommended October 15 water surface target elevation,⁴⁶ to 263.5 feet msl with an allowable target range of ± 0.5 feet to allow S.D. Warren to retain water in the lake from storm events in August and September and release the water to benefit downstream aquatic resources. Mr. Frechette states that water levels at or slightly above 263.5 feet msl in October would help to mitigate harm to aquatic habitat and mammals. In the supplemental EA,⁴⁷ staff concluded that fall lake levels under its recommended alternative would reduce any adverse effects on littoral zone habitat (used by aquatic species and mammals), compared to the S.D. Warren's proposal and the certification conditions.

69. Roger Wheeler opposes the staff recommendation to operate the project under a lake-level based plan during the spring, summer, and early-fall months (May 15 through October 15) because the higher lake levels would exacerbate beach erosion. In the supplemental EA,⁴⁸ Commission staff determined that operating the project under the LLMP between May 15 through October 15 would reduce erosion potential during the late-October to May period when average wind speeds would be the highest, but would maintain higher lake levels during the summer peak and early fall recreation season when average wind speeds and potential beach erosion would be the lowest and public use the highest.

⁴⁶ In the supplemental EA, staff recommended an October 15 water surface target elevation of 263.3 feet msl.

⁴⁷ See supplemental EA at 190.

⁴⁸ See supplemental EA at 59 and 273.

70. Certification conditions 1 and 2, which are mandatory and included in this license, require S.D. Warren to operate the project throughout the year according to the flow-based regime included in its 2011 proposal. Therefore, the project will be operated as recommended in S.D. Warren's, Maine DEP's, and Roger Wheeler's comments on the supplemental EA and the modification proposed by Mr. Frechette in comments on the supplemental EA cannot be implemented. In the supplemental EA, Commission staff concluded that there would be some benefit under the flow-based regime from less shoreline erosion associated with more frequent lower lake levels, but the flow-based regime would result in lower lake levels during the recreation season, especially during dry, low inflow years.

B. Bypassed Reach Minimum Flows

71. S.D. Warren states that the staff-recommended 125-cfs minimum bypassed reach flows from April 1 to October 31 are higher than needed, would result in a negative impact to coldwater refugia, would require expensive modifications to the project's canal waste gates, and would reduce generation.⁴⁹ In the supplemental EA, Commission staff summarized the habitat available under a range of minimum flows and concluded that, generally, the amount of riffle and run habitat in the bypassed reach increases for juvenile and adult life stages of brook trout and landlocked Atlantic salmon (the primary life stages and species for which the bypassed reach is managed by Maine DIFW) with flows up to approximately 200 cfs. The one exception is adult landlocked Atlantic salmon, for which the most habitat occurs at a flow of 400 cfs. Angler suitability of the bypassed reach increases up to flows of 115 cfs before declining slightly at 172 cfs. Flows above 75 cfs in the summer decrease the size of coldwater refugia and coldwater refugia are eliminated at flows of 172 cfs and higher. Based on this information, the increase from 75 cfs to 125 cfs provides measureable benefits to aquatic habitat and angler suitability, with a slight risk of affecting coldwater refugia.⁵⁰ To document the effects on coldwater refugia, Commission staff recommended monitoring the coldwater refugia following implementation of its recommended minimum flows (discussed further below).

72. S.D. Warren estimates that the modifications to the canal waste gates to release the 125-cfs minimum flow would cost over \$100,000 and these flows would reduce annual generation by about 1,000 MWh. Because the benefits of the staff-recommended

⁴⁹ S.D. Warren indicates that the three existing minimum flow waste gates can only discharge 25 cfs, for a total discharge of 75 cfs (see license application at A-13).

⁵⁰ See supplemental EA at 274-275.

minimum flows are worth the cost discussed here and below, Article 402 requires minimum flows in the bypassed reach of 125 cfs from April 1 through October 31, and Article 403 requires that S.D. Warren develop and implement a minimum flow release plan.

C. Flow and Temperature Monitoring

73. S.D. Warren states that the temperature monitoring component of the staff-recommended operation compliance monitoring plan is only necessary because the staff-recommended minimum flows for the bypassed reach are too high and would eliminate coldwater refugia. S.D. Warren also states that temperature monitoring may be technically difficult and expensive. While monitoring to determine effects on coldwater refugia may require multiple measurements within each refuge area, the monitoring is necessary to identify possible effects on coldwater refugia and would be worth the additional cost and effort. If the temperature monitoring demonstrates adverse effects to the coldwater refugia from the minimum flows, the Commission may consider requiring changes to the minimum flow requirements.

D. Conservation Easement

74. During pre-filing consultation, Maine DIFW requested that S.D. Warren grant a perpetual easement to the state to ensure that land necessary to access the fishery in the Eel Weir bypassed reach remains open to the public.⁵¹ Maine DIFW indicated that sales of land by S.D. Warren raised concern about the future of S.D. Warren-owned lands that are used for accessing the bypassed reach and associated parking.⁵² Additionally, the town of Windham requested, during pre-filing consultation, that S.D. Warren consider establishing a land grant and/or perpetual easement with the town for land around the bypassed reach.⁵³ In response to this information, S.D. Warren proposed, in its license application, to evaluate opportunities for establishing a conservation easement on S.D. Warren-owned land around the bypassed reach with the town of Windham as part of the Land for Maine's Future program. In addition, the Recreation Resources Study Report

⁵¹ See Maine DIFW's May 5, 2000, and September 31, 2001, letters in Appendix B-3 of the license application; and August 5, 2003, filing.

⁵² *Ibid.*

⁵³ See the town of Windham's August 19, 1999, letter in Appendix B-3 of the license application.

prepared by S.D. Warren during pre-filing concluded that increased use of the bypassed reach fishery could result in the need for more formal access facilities.⁵⁴

75. In the supplemental EA,⁵⁵ Commission staff recommended that any new license include procedures for consulting with the town of Windham and Maine DIFW on establishing a conservation easement as part of the staff-recommended LRMP. In its comments on the supplemental EA, S.D. Warren states that although it proposed to initiate discussions with the town of Windham on developing a conservation easement, it should not be required to create a conservation easement because no entity has agreed to accept a conservation easement to date. In addition, S.D. Warren states that there is insufficient justification to require any lands placed in a conservation easement to be included in the project boundary.

76. Maine DIFW states that the bypassed reach fishery attracts some of the highest angler use of any comparable fishery in the state.⁵⁶ Estimates from 1993 to 2000 indicate that the number of angler days⁵⁷ in the bypassed reach ranged from 2,811 in 1993 to 8,801 in 2000.⁵⁸ To support the year-round fishery, Maine DIFW stocks the bypassed reach with brook trout throughout the spring and again in the fall each year.⁵⁹ In addition, Maine DIFW occasionally stocks the bypassed reach with landlocked Atlantic salmon and brown trout to diversify angling opportunities.⁶⁰ Anglers access the fishery from a parking area directly adjacent to the east side of the bypassed reach. From the parking area, trails on S.D. Warren-owned land lead to angling access locations along the

⁵⁴ See Recreation Resources Study Report at 51 in Appendix D-7 of the license application.

⁵⁵ See supplemental EA at 279.

⁵⁶ See Maine DIFW's May 5, 2000, letter in Appendix B-3 of the license application.

⁵⁷ An angler day is one person fishing for any amount of time on a single day.

⁵⁸ See Recreation Resources Study Report at 44 in Appendix D-7 of the license application.

⁵⁹ See <http://www.maine.gov/ifw/fishing/opportunities/sebagolakes.htm>.

⁶⁰ See Maine DIFW's June 17, 2011, filing at 3.

bypassed reach; however, none of these access areas are located within the project boundary.

77. In the supplemental EA,⁶¹ staff determined that ensuring public access to the bypassed reach would be important for maintaining this popular recreational fishery. Because it is uncertain whether a conservation easement could be negotiated to protect angling access to the bypassed reach, this license does not require S.D. Warren to conduct additional consultation to that end. Instead, Article 407 requires S.D. Warren to consult with Maine DIFW, Maine DEP, and the town of Windham to develop a plan for maintaining the existing access areas on S.D. Warren-owned lands and enclosing these areas within the project boundary as project recreation areas under the required LRMP. This will ensure that angling access to the bypassed reach is maintained by the licensee throughout the term of the license.

E. Wetlands Monitoring

78. S.D. Warren conducted wetlands monitoring from 1998 through 2002 to determine the effects of the existing LLMP on wetlands within or adjacent to Sebago Lake.⁶² In the 2005 final EA, staff determined that the results of the wetlands monitoring showed minimal changes in species composition and percent total cover of vegetation in the monitored wetlands. However, staff concluded that a definitive answer on the relative importance of water levels compared to other factors could not be determined using the limited data available.⁶³ Therefore, staff recommended that S.D. Warren develop and implement a similar plan to monitor wetlands once every 5 years for term of license.⁶⁴

79. In its 2011 amendment to its application, S.D. Warren proposed to discontinue wetlands monitoring in the project area, because monitoring data indicate little change in wetlands from existing project operation, and its proposed flow-based operation would be even less likely to affect wetlands. In the supplemental EA, staff recommended an elevation-based LLMP during the growing season that is similar to staff-recommended

⁶¹ See supplemental EA at 235 and 293.

⁶² On April 21, 1997, the Commission issued an order approving settlement and amending license that required S.D. Warren to conduct wetlands monitoring in the project area for a maximum of five years. See 79 FERC ¶ 61,064 (1997).

⁶³ See final EA at 161.

⁶⁴ See final EA at 228.

operation in the 2005 final EA; therefore, staff continued to recommend that S.D. Warren develop and implement a plan to monitor wetlands on a 5-year cycle.⁶⁵ In its comments, S.D. Warren states that the additional wetlands monitoring recommended by staff in the supplemental EA is unnecessary. In regard to the flow-based regime, staff concluded in the supplemental EA that the flow-based operation proposed by S.D. Warren would provide more natural variability in lake levels during the growing season and monitoring wetlands would not be necessary.⁶⁶ Because certification condition 1.A (ordering paragraph (D)) requires flow-based operation of the project year-round, wetlands monitoring is not needed and the license does not require the development and implementation of a plan to monitor wetlands.

F. Boat Launch Facility

80. In the supplemental EA,⁶⁷ Commission staff recommended that S.D. Warren develop a plan to construct, operate, and maintain a shallow-water boat launch on S.D. Warren-owned lands in the Sebago basin⁶⁸ as part of the LRMP. Certification condition 8 requires S.D. Warren to conduct a study in consultation with Maine DIFW that evaluates options for providing improved public boat access to Sebago Lake. In addition, certification condition 8 states that after reviewing the study report, Maine DEP will reopen the water quality certification to require improved public boat access to Sebago Lake as it deems necessary and appropriate.

81. In its comments on the supplemental EA, S.D. Warren states that it should not be required to install the shallow-water boat launch facility recommended by Commission staff without conducting the study and consulting with Maine DIFW as required by certification condition 8. In addition, S.D. Warren states that Maine DIFW has expressed

⁶⁵ The growing season is approximately May 1 through September 15.

⁶⁶ In the supplemental EA, the 2014 staff alternative with mandatory conditions did not recommend that S.D. Warren develop and implement a plan to monitor wetlands. *See* supplemental EA at 20 and 269.

⁶⁷ *See* supplemental EA at 278-279.

⁶⁸ Sebago basin is a shallow bay that forms the Sebago Lake outlet on the east side of the lake, immediately upstream of the Eel Weir dam. *See* supplemental EA, Appendix A, figure 2.

a willingness to consider alternatives to constructing a new boat launch to improve public boat access to Sebago Lake.⁶⁹

82. Constructing a shallow-water boat launch in the Sebago basin would provide an alternative location for private dock owners to launch boats during the off season⁷⁰ when boating access is not available from existing public launches or private docks due to lower lake levels. However, because conducting the study and consultation required by certification condition 8 will help inform a decision on the most effective option for improving public boat access to Sebago Lake, this license does not require S.D. Warren to construct a shallow-water boat launch in the Sebago basin. Instead, Article 407 requires that the LRMP include measures for providing improved public boat access to Sebago Lake based on the results of the public boat access study required by certification condition 8.

G. American Eel Passage

83. S.D. Warren states that, although it accepts the certification requirement to develop a plan for upstream and downstream American eel passage, it continues to believe that the plan is premature until eel passage is required at the downstream North Gorham Project (FERC Project No. 2519). S.D. Warren requests that the Commission allow sufficient time to develop the plan, particularly the downstream eel passage plan, because downstream passage will require modification to one or more of the project's gates and is complicated by incomplete study results from downstream projects and the need to protect Atlantic salmon spawning and exclude other species of fish from entering Sebago Lake.

84. American eels occur in the Presumpscot River, both upstream and downstream of the project dam. By order issued February 26, 2009 (126 FERC ¶ 62,152), the Commission approved S.D. Warren's upstream eel passage plan for its five projects located in the lower Presumpscot River downstream of the Eel Weir Project, and upstream eel passage facilities are now operational at each of those projects. In addition, conditions 4 and 5 of the certification require that upstream and downstream eel passage facilities be operational within two years of license issuance. Even though there are no passage facilities at the North Gorham Project which is located about 1.4 miles downstream of the Eel Weir powerhouse, successful operation of the eel passage

⁶⁹ See Maine DIFW's June 17, 2011, filing at 4.

⁷⁰ The off season is October 16 through May 14.

facilities at S.D. Warren's five downstream projects will likely result in higher numbers of eels reaching the Eel Weir dam. Without safe and effective upstream passage, these eels may not be able to access the habitat upstream of Eel Weir dam. The required eel passage facilities will ensure that eels can access to the habitat upstream of Eel Weir dam and will limit entrainment by providing safe and effective downstream passage for eels migrating downstream from Sebago Lake and its tributaries.

85. The plans required by certification conditions 4 and 5, combined with the Commission approval required by Article 401, would allow sufficient consultation and review to ensure that upstream and downstream American eel passage facilities are designed and implemented at the project in a timely, efficient, and effective way.

H. Upstream and Downstream Passage for Landlocked Atlantic Salmon

86. Friends of Sebago Lake states that Commission staff did not adequately consider the potential benefits of upstream and downstream passage for landlocked Atlantic salmon at the Eel Weir dam and that Commission staff relied too heavily on Maine DIFW's opposition to landlocked Atlantic salmon passage in its analysis. In the supplemental EA,⁷¹ staff evaluated the potential benefits of providing passage for landlocked Atlantic salmon and concluded that passage could restore historically significant spawning habitat and provide access to smelt forage in Sebago Lake, both of which could enhance the landlocked Atlantic salmon fishery. However, Commission staff also indicated that Maine DIFW, which manages landlocked Atlantic salmon in the project area, does not support providing upstream and downstream passage at the Eel Weir dam for several reasons.⁷² Maine DIFW indicates that if downstream passage is provided at Eel Weir dam, then landlocked Atlantic salmon may spawn in the bypassed reach rather than the Jordan River where Maine DIFW collects broodstock for its landlocked Atlantic salmon hatchery program.⁷³ A reduction in the availability of broodstock from the Jordan River could adversely affect Maine DIFW's landlocked Atlantic salmon hatchery program, which supports fisheries in the project area and elsewhere in Maine. Maine DIFW also indicated that if an upstream passage facility is provided at Eel Weir dam, then the landlocked Atlantic salmon that currently inhabit the bypassed reach and support popular fishery there could migrate out of the bypassed reach

⁷¹ See supplemental EA at 184-187.

⁷² See supplemental EA at 281.

⁷³ The Jordan River is a tributary of Sebago Lake.

into Sebago Lake. A loss of fish from the bypassed reach could reduce the popularity and success of the bypassed reach fishery. Finally, Maine DIFW indicates that an upstream passage facility could introduce new fish species from downstream areas into Sebago Lake and would increase the risk for introducing fish diseases. Introducing new species and diseases into Sebago Lake could adversely affect the ecology and existing aquatic community within Sebago Lake. In the supplemental EA, Commission staff considered these potential effects and concluded that the potential benefits of providing upstream and downstream passage at Eel Weir dam for landlocked Atlantic salmon do not outweigh the potential risks to the existing fisheries and Commission staff did not recommend providing upstream and downstream passage at Eel Weir dam. For these reasons, this license does not require upstream or downstream passage at Eel Weir dam for landlocked Atlantic salmon at this time.

I. Historic Properties Management

87. S.D. Warren conducted two Phase 0 Historic Archaeological Surveys in 2001 and 2002 within the project's APE that identified 67 sites in the project area. Of the 67 sites, 47 are, or may be, eligible for listing on the National Register. The survey report recommended a Phase One archaeological study at 44 of the sites, a Phase Two archaeological study at 2 sites, and a Phase Three archaeological study at one site that is deemed to be eligible for the National Register. The Phase 0 surveys also assessed the archaeological potential of the project shoreline and concluded that there are no historic archaeological sites in the project's APE.⁷⁴

88. The PA discussed above, requires S.D. Warren to prepare an HPMP that includes a plan to address the National Register eligibility of, and the effects attributable to the project on, the 47 archaeological sites that have been identified for further investigation. However, in comments, S.D. Warren states that the Phase 0 surveys conducted in 2001 and 2002 may no longer reflect current conditions, project operations, and the ability to obtain access to private lands, and it proposes to file an updated Phase 0 analysis within one year of license issuance and complete a Phase One study within three years of completing the Phase 0 update. Because of the amount of time that has passed since the project's Phase 0 surveys were completed, it is appropriate to update the Phase 0 analysis prior to preparing the HPMP. Therefore, Article 408 of the license requires S.D. Warren to file an HPMP within one year of license issuance for Commission approval that includes, in part, an updated Phase 0 analysis and a description of and schedules for

⁷⁴ See supplemental EA at 239-243.

further work to be completed (e.g., Phase One, Phase Two, Phase Three surveys) as determined through consultation with the Maine SHPO.

J. Shoreline Erosion

89. Deb Boxer recommends lowering the staff-recommended May 15 target lake level for Sebago Lake from 266.15 feet msl to 264.5 feet msl for the first five years of flow-based operation to rebuild the lake shoreline. Certification condition 1.A, which is mandatory and included in this license, requires S.D. Warren to maintain lake levels within a target range with the goal of achieving a target lake level of 266.0 feet msl between May 1 and June 15 annually. Therefore, the modification to the May 15 target lake level proposed by Ms. Boxer cannot be implemented.

90. Ms. Boxer also recommends that S.D. Warren be required to develop a photo record of at least five major beaches on the lake during the first five years of flow-based operation. In the supplemental EA,⁷⁵ staff determined that the flow-based operation required by certification condition 1.A would provide more natural variability in lake levels than the LLMP. Staff indicated that average lake levels would likely be lower than recent levels in the spring and fall, when wind speeds are generally higher. The lower lake levels should reduce beach erosion associated with wave action and storm events during the spring and fall and may result in sand accretion to beaches. Therefore, a photo record of lake beaches is not needed.

91. Lastly, Ms. Boxer states that there should be a moratorium on shoreline cement wall construction or large boulder hardscaping until a comprehensive review of other major lakes around the country determines the effects of these structures on scour. In the supplemental EA,⁷⁶ staff indicated that the State of Maine's Natural Resources Protection Act protects Sebago Lake through a permitting program in which activities requiring a permit include constructing structures within Sebago Lake.⁷⁷ In addition, Article 409 of this license permits the licensee to grant permission to construct embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline, if the proposed structure is consistent with the purposes of protecting and

⁷⁵ See supplemental EA at 58-59.

⁷⁶ See supplemental EA at 238.

⁷⁷ The permitting program requires a permit for dredging, dewatering, filling or constructing structures within Sebago Lake.

enhancing the scenic, recreational, and other environmental values of the project. The licensee must also ensure that the structures for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements.⁷⁸ The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing these types of modifications, if necessary.

K. Downstream Cumulative Affects – Red Tide

92. Mr. Kasprzak suggests that operation of the project under the existing LLMP results in unnatural low and high flow releases of fresh water that may be contributing to an increase in the number and intensity of red tide events in Casco Bay.^{79, 80} While operating the project under the LLMP may at times result in flows that are lower or higher than would occur without the project, there is no information in the record to suggest these effects result in a significant change in the freshwater discharge into Casco Bay or have any influence on the number or intensity of red tides in Casco Bay. Analysis by Maine DEP of this issue has been inconclusive,⁸¹ and a report on Casco Bay red tide events found that red tides may be triggered more by regional water circulation than by local nutrient inputs.⁸² In addition, the report did not identify freshwater input to Casco

⁷⁸ The article further requires that, before granting permission for construction of bulkheads or retaining walls, the licensee must: (1) inspect the site of the proposed construction; (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and (3) determine that the proposed construction is needed and would not change the basic contour of the impoundment shoreline.

⁷⁹ Casco Bay is an inlet of the Gulf of Maine and has a drainage are of 986 square miles and is about 25 miles downstream from the project. In addition to the Presumpscot River, the other freshwater tributaries to Casco Bay are the Royal, Fore, and Stroudwater Rivers.

⁸⁰ Red tide is the common name for a phenomenon known as an algal bloom that takes on a red or brown color and can occur in an estuarine or marine environment.

⁸¹ See Maine DEP's August 30, 2011 filing at 38.

⁸² Battelle, 2010. Red Tides in Inshore and Offshore Casco Bay and Their Relationship to Local and Gulf of Maine Physical and Biological Conditions. Final Report. Available at <http://www.cascobayestuary.org/wp> (continued ...)

Bay as a factor in the occurrence of red tide events. In any case, this license does not require S.D. Warren to operate according to the LLMP and instead the project will be operated according to the flow-based regime proposed by S.D. Warren and required by the certification (ordering paragraph (D)).

L. Project Economics

93. In its license application S.D. Warren reports the average annual generation of the project as 12,300 MWh.⁸³ In the supplemental EA (and previous EAs), Commission staff used 12,300 MWh to represent the average annual generation that would occur under the no action alternative.⁸⁴ S.D. Warren states that the supplemental EA overestimates average annual generation and that over the past five years (from 2009 through 2013), the average annual generation of the project was 6,604 MWh.⁸⁵ S.D. Warren provides no explanation for why average annual generation over the past five year is almost half the average annual generation that it reported in its license application. It is possible generation was lower because inflow to Sebago Lake was below average or because the project was offline more than prior years; however, no flow or operation data are available to verify these possibilities. Because S.D. Warren's recent estimate is only based on a five year period that could be influenced by anomalous conditions, the economic analysis in this order relies on the original estimate for average annual generation that S.D. Warren provide in its license application, which is likely based on a longer period of record.

94. S.D. Warren also indicates that implementing the staff-recommended minimum bypassed reach flow would cost over \$100,000 because the three existing minimum flow gates would need to be modified to release the minimum flows, and increasing the minimum bypassed reach flow would reduce annual generation by about 1,000 MWh. In the supplemental EA,⁸⁶ staff estimated that the cost to modify two gates to release the 125-cfs minimum flow would be \$66,960, and staff estimated that lost generation due to

content/uploads/2014/08/2010_battelle_red_tides_full_report.pdf.

⁸³ See the license application at A-9.

⁸⁴ See the supplemental EA at 253.

⁸⁵ See NJS Law PLC letter filed on May 8, 2014, on behalf of S.D. Warren.

⁸⁶ See supplemental EA at 260.

the 125-cfs minimum flows would be 956 MWh. Staff's cost estimate to modify two minimum flow gates is about two-thirds the cost of S.D. Warren's cost estimate to modify three minimum flow gates; however, S.D. Warren indicates that all three gates will require modification in order to release the 125-cfs minimum flow. Using this new information, the economic analysis presented in this order has been revised to include S.D. Warren's \$100,000 estimate to modify all three minimum flow gates. Because S.D. Warren did not describe how it calculated its 1,000 MWh estimate of lost generation for the 125-cfs minimum flow, the economic analysis in this license order uses staff's estimate of lost generation associated with the 125-cfs minimum flow.

95. As discussed above, in the supplemental EA Commission staff recommended that S.D. Warren develop a plan to construct, operate, and maintain a shallow-water boat launch on S.D. Warren-owned lands in the Sebago basin as part of the staff-recommended LRMP. Staff estimated that the cost to construct the shallow-water boat launch in Sebago basin would be \$53,570 and operation and maintenance (O&M) would be \$2,680 annually.

96. Certification condition 8 requires S.D. Warren to conduct a study in consultation with Maine DIFW to evaluate options for providing improved public boat access to Sebago Lake. In addition, certification condition 8 states that, after reviewing the study report, Maine DEP will reopen the water quality certification to require improved public boat access to Sebago Lake as it deems necessary and appropriate. Because conducting the study and consultation required by certification condition 8 will help determine the most effective option for improving public boat access on Sebago Lake, this license does not require S.D. Warren to construct a shallow-water boat launch in the Sebago basin. Article 401 of this license requires S.D. Warren to file the study report with the Commission and reserves the Commission's right to require changes to project facilities based on the information contained in the study report. Staff estimates that the annual cost to conduct the study and file the study report will be \$528. The economic analysis presented in this order has been revised to include this estimate.

97. S.D. Warren contends that staff underestimated the cost of annual O&M in the supplemental EA and states that because of the additional measures included in the staff-alternative, annual O&M costs would be over \$100,000 above the current O&M costs during each of the first four years of the new license.⁸⁷ In a letter filed on December 4,

⁸⁷ The estimated annual O&M cost would initially increase over four years to implement measures required by this license, and then stabilize or gradually increase over the term of the license.

2002, S.D. Warren indicated the average annual O&M cost of the project is \$100,189 (2002\$). In the supplemental EA, staff estimated that the annual O&M costs under the existing license (i.e., the no action alternative) would be \$228,153 (2014\$), and under the staff alternative with mandatory conditions, which includes the same measures as required by this license, the costs would be \$343,619 (2014\$).⁸⁸ The difference between staff's estimates for annual O&M under the no action alternative and the staff alternative with mandatory conditions is \$115,466, which exceeds the net increase in annual O&M costs estimated by S.D. Warren.

98. S.D. Warren indicates that the economic analysis in the supplemental EA does not account for \$400,000 of repair work completed in the project canal area in 2014. When estimating the costs of relicensing a project, the Commission includes ongoing and new costs and does not consider expenses incurred during the prior license. Because the cost of the canal repair was incurred under the existing license,⁸⁹ the cost estimates presented in this order do not include the cost of the canal repairs.

ADMINISTRATIVE PROVISIONS

A. Annual Charges

99. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of funds for administration of the FPA.

B. Exhibit F and G Drawings

100. Exhibit F drawings sheets 1 and 2 filed on March 29, 2002, are approved and made part of the license (ordering paragraph (C)). The Exhibit F drawing sheet 3 filed on December 1, 2014, showing the cross section of the repaired power canal was approved and made part of the license on January 30, 2015.⁹⁰ The Commission requires licensees to file sets of approved project drawings in electronic file format. Article 202 requires the filing of these drawings.

101. The three Exhibit G drawings filed on March 29, 2002, labeled sheet 1, 2, and 3 of 3 do not include three known reference points and are not stamped by a registered land

⁸⁸ See supplemental EA at 267.

⁸⁹ See Notice of Authorization for Continued Project Operation issued April 7, 2004.

⁹⁰ See 150 FERC ¶ 62,079 (2015).

surveyor. In addition, sheet 1 shows and labels the project boundary contour line around Sebago Lake, but does not show and label the upstream extent of the project boundary enclosing Sebago Lake, sheet 2 does not show and label the project's transmission line connected to the project powerhouse, and sheet 3 includes a note stating "project boundary is 10-feet each side of the transmission line (not shown on this drawing because of scale)," but does not show and label where the project's transmission line interconnects with the existing Dundee Project No. 2942 powerhouse. Further, the Exhibit G drawings do not show or label lands owned by S.D. Warren or lands acquired by easement or lease.⁹¹

102. For these reasons, Exhibits G, sheets 1, 2, and 3 are not approved and are not made part of the license. Article 203 requires the licensee to file revised Exhibit G drawings that: (1) show three known reference points; (2) have been stamped by a registered land surveyor; (3) enclose within the project boundary all principal project works necessary for operation and maintenance of the project, including the upstream extent of Sebago Lake and the project's existing transmission line connected to the project powerhouse and connected to the Dundee Project powerhouse; and (4) show and label all lands within the project boundary owned by S.D. Warren or lands acquired by easement or lease.

C. Amortization Reserve

103. The Commission requires that for new major licenses, non-municipal licensees set up and maintain an amortization reserve account upon license issuance. Article 204 requires the establishment of the account.

D. Headwater Benefits

104. Some projects directly benefit from headwater improvements that were constructed by other licensees, the United States, or permittees. Article 205 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

E. Use and Occupancy of Project Lands and Waters

⁹¹ Section 4.41(h)(4) of the Commission's regulations require for non-federal lands within the project boundary, an Exhibit G that identify lands owned in fee by the applicant and lands the applicant plans to acquire in fee, and lands the applicant has acquired or plans to acquire rights to occupancy and use other than by fee title by easement or lease.

105. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 409 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting and single family boat docks. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

F. Project Land Rights Progress Report

106. According to S.D. Warren, it owns approximately 292 acres of land in the project area around the project structures and adjacent to the Eel Weir bypassed reach. Of this total, 11.7 acres are located within the project boundary, including a small portion of the Sebago Lake shoreline near the project intake facilities, the Eel Weir dam and associated facilities, the power canal, and the Eel Weir powerhouse and tailrace.⁹² Lands along the Sebago Lake shoreline are primarily privately owned; however, some shoreline lands are publicly owned.⁹³ S.D. Warren did not indicate whether it owns or has an easement for the land along the 3.5-mile-long Eel Weir Project transmission line.

107. Standard Article 5 set forth in Form L-3 requires the licensee to acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project, within five years. In order to monitor compliance with Article 5, Article 206 requires the licensee to file no later than four years after license issuance, a report detailing its progress on acquiring title in fee or the necessary rights to all lands within the project boundary. The report shall include specific documentation on the status of the rights that have been acquired as of the filing date of the progress report, and a plan and schedule to acquire all remaining land prior to the five-year deadline.

G. Start of Construction

108. Article 301 requires the licensee to commence construction of the project works (i.e., modifications to three minimum flow gates) within two years from the issuance date of the license and complete construction within five years from the issuance date of the license.

H. Review of Final Plans and Specifications

⁹² See supplemental EA at 277.

⁹³ See license application figure E.1.7-2.

109. Article 302 requires the licensee to provide the Commission's Division of Dam Safety and Inspections New York Regional Office (D2SI-NYRO) with a reservoir operation report prior to implementing project operation required by this license.

110. Article 303 requires the licensee to provide the Commission's D2SI-NYRO with cofferdam construction drawings.

111. Article 304 requires the licensee to provide the Commission's D2SI-NYRO with final contract drawings and specifications—together with a supporting design report consistent with the Commission's engineering guidelines.

112. Where new construction or modifications to the project are involved, the Commission requires licensees to file revised drawings of project features as-built. Article 305 provides for the filing of these drawings.

113. Article 306 requires the licensee to provide the Commission's D2SI-NYRO with project modification resulting from environmental requirements.

I. Commission Approval of Resource Plans, Notification, and Filing of Amendments

114. In Appendix A, there are certain certification conditions that either do not require the licensee to file plans with the Commission for approval; do not require the licensee to file reports with the Commission; or require agency, but not Commission notification of emergencies and other activities. Therefore, Article 401 requires the licensee to: file the plans with the Commission for approval; file reports with the Commission after monitoring has been completed; notify the Commission of emergencies and other activities; and file amendment applications, as appropriate.

STATE AND FEDERAL COMPREHENSIVE PLANS

115. Section 10(a)(2)(A) of the FPA,⁹⁴ requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.⁹⁵ Under section 10(a)(2)(A), federal and state agencies filed 26 comprehensive plans that address

⁹⁴ 16 U.S.C. § 803(a)(2)(A) (2012).

⁹⁵ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2014).

various resources in Maine. Of these, the staff identified and reviewed 10 comprehensive plans that are relevant to this project.⁹⁶ No conflicts were found.

APPLICANT'S PLANS AND CAPABILITIES

116. In accordance with sections 10(a)(2)(C) and 15(a) of the FPA,⁹⁷ Commission staff evaluated S.D. Warren's record as a licensee for these areas: (A) conservation efforts; (B) compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable electric service; (E) need for power; (F) transmission services; (G) cost effectiveness of plans; and (H) actions affecting the public. This order adopts staff's findings in each of the areas.

A. Conservation Efforts

117. Section 10(a)(2)(C) of the FPA requires the Commission to consider the electricity consumption improvement program of the applicant, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of state regulatory authorities. All power generated by the Eel Weir Project is used by S.D. Warren's paper production mill located in Westbrook, Maine.

118. Our review of S.D. Warren filing under section 16.10 and other publicly available information indicates that S.D. Warren supports a variety of energy conservation measures including routinely upgrading industrial components such as motors and a high-efficiency lighting program. We conclude that S.D. Warren is making a reasonable effort in encouraging energy conservation.

B. Compliance History and Ability to Comply with the New License

119. Based on a review of S.D. Warren's compliance with the terms and conditions of the existing license, staff finds that S.D. Warren's overall record of making timely filings and complying with its license is satisfactory. Therefore, staff believes S.D. Warren can satisfy the conditions of a new license.

⁹⁶ The list of applicable plans can be found in section IX of the supplemental EA for the project.

⁹⁷ 16 U.S.C. §§ 803(a)(2)(C) and 808(a) (2012).

C. Safe Management, Operation, and Maintenance of the Project

120. Staff has reviewed S.D. Warren's record of management, operation, and maintenance of the Eel Weir Project pursuant to the requirements of 18 C.F.R. Part 12 and the Commission's Engineering Guidelines and periodic Independent Consultant's Safety Inspection Reports. Staff concludes that the dam and other project works are safe, and that there is no reason to believe that S.D. Warren cannot continue to safely manage, operate, and maintain these facilities under a new license.

D. Ability to Provide Efficient and Reliable Electric Service

121. Staff has reviewed S.D. Warren's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Staff's review indicates that S.D. Warren regularly inspects the project turbine-generator units to ensure they continue to perform in an optimal manner, schedules maintenance to minimize effects on energy production, and since the project has been in operation, has undertaken several initiatives to ensure the project is able to operate reliably into the future. Staff concludes that S.D. Warren is capable of operating the project to provide efficient and reliable electric service to its paper mill.

E. Need for Power

122. To assess the need for power, staff looked at the licensee's present and anticipated future use of project power, together with the need for power in the operating region in which the project is located. Historically, the Eel Weir Project has generated an average of 12,300 MWh annually and as licensed the average annual generation will be reduced. Electricity generated from the Eel Weir Project will help fulfill S.D. Warren's power needs at its paper mill.

123. Further, the project is located in the Northeast Power Coordinating Council, Inc. (NPCC) region of the North American Electric Reliability Corporation (NERC). NERC annually forecasts electrical supply and demand in the nation and the region for a 10-year period. NERC's most recent report on annual supply and demand projections indicates that, for the period 2014-2023, summer peak demand in the region is expected to increase at an average rate of 0.84 percent per year. The project, as licensed, has the potential to displace about 11,804 MWh of this demand. Staff concludes that the project's power will help continue to meet S.D. Warren's power needs and displace the need for power in the NPCC region.

F. Transmission Services

124. The project includes a 3.5-mile-long transmission line that connects the generators in the project powerhouse to S.D. Warren's Dundee Project No. 2942 powerhouse for

transmission to S.D. Warren's paper mill located in Westbrook, Maine. S.D. Warren is proposing no changes that would affect its own or other transmission services in the region. The project and project transmission line are important elements in providing power and voltage control to S.D. Warren.

G. Cost Effectiveness of Plans

125. S.D. Warren plans to make a number of operational modifications to enhance environmental resources affected by the project. Based on S.D. Warren's record as an existing licensee, staff concludes that these plans are likely to be carried out in a cost-effective manner.

H. Actions Affecting the Public

126. S.D. Warren provided extensive opportunity for public involvement in the development of its application for a new license for the Eel Weir Project. During the previous license period S.D. Warren maintained lake levels to provide water related recreational activities such as swimming, fishing and boating access, and maintained year round downstream flows to enhance the public use of project lands and facilities such as angling downstream of the dam in the bypassed reach. S.D. Warren uses the project to help meet the power needs of its paper mill.

PROJECT ECONOMICS

127. In determining whether to issue a new license for an existing hydroelectric project, the Commission considers a number of public interest factors, including the economic benefits of project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,⁹⁸ the Commission uses current costs to compare the costs of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

128. In applying this analysis to the Eel Weir Project, staff considered three options: no-action alternative, S.D. Warren's proposal, and the project as licensed herein. Under the no-action alternative, the project would continue to operate as it does now. The

⁹⁸ 72 FERC ¶ 61,027 (1995).

project has an installed capacity of 1.8 MW, has a dependable capacity of 0.38 MW, and generates an average of 12,300 MWh of electricity annually. The average annual project cost is about \$228,153, or \$18.55/MWh. When we multiply our estimate of average generation by the alternative power cost of \$36.83/MWh,⁹⁹ staff gets a total value of the project's power of \$453,009 in 2015 dollars. To determine whether the proposed project is currently economically beneficial, staff subtracts the project's cost from the value of the project's power. Therefore, the project costs \$224,856, or \$18.28/MWh, less to produce power than the likely alternative cost of power.

129. As proposed by S.D. Warren, the levelized annual cost of operating the Eel Weir Project is \$268,719, or \$21.39/MWh. The proposed project would generate an average of 12,563 MWh of energy annually. When we multiply our estimate of average generation by the alternative power cost of \$36.83/MWh, staff gets a total value of the project's power of \$462,695, in 2015 dollars. Therefore, in the first year of operation, the project would cost \$193,976, or \$15.44/MWh, less than the likely alternative cost of power.

130. As licensed herein with mandatory conditions and staff measures, the levelized annual cost of operating the project would be about \$348,095, or \$29.49/MWh. The proposed project would generate an average of 11,804 MWh of energy annually. When we multiply our estimate of average generation by the alternative power cost of \$36.83/MWh, staff gets a total value of the project's power of \$434,741 in 2015 dollars. Therefore, in the first year of operation, project power would cost \$86,646, or \$7.34/MWh, less than the likely cost of alternative power.

COMPREHENSIVE DEVELOPMENT

131. Sections 4(e) and 10(a)(1) of the FPA¹⁰⁰ require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

⁹⁹ The alternative power cost of \$36.83 per MWh is based on the U.S. Energy Information Administration fuel cost data.

¹⁰⁰ 16 U.S.C. §§ 797(e) and 803(a)(1) (2012).

132. The supplemental EA for the project contains background information, analysis of effects, and support for related license articles. Based on the record of this proceeding, including the supplemental EA and the comments thereon, licensing the Eel Weir Project as described in this order would not constitute a major federal action significantly affecting the quality of the human environment. The project will be safe if operated and maintained in accordance with the requirements of this license.

133. Based on an independent review and evaluation of the Eel Weir Project, recommendations from the resource agencies and other stakeholders, and the no-action alternative, as documented in the supplemental EA, the proposed Eel Weir Project, with the staff-recommended measures, is best adapted to a comprehensive plan for improving or developing the Presumpscot River.

134. This alternative was selected because: (1) issuance of a new license will serve to maintain a beneficial, and dependable source of electric energy; (2) the required environmental measures will protect and enhance fish and wildlife resources, water quality, recreation resources, and historic properties; and (3) the 1.8 MW of electric capacity comes from a renewable resource that does not contribute to atmospheric pollution.

LICENSE TERM

135. Section 15(e) of the FPA¹⁰¹ provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.¹⁰² This license authorizes no new capacity, a moderate amount of new construction including upstream and downstream eel passage facilities and modifications to the minimum flow gates, and a moderate amount of new environmental mitigation measures including increasing minimum flows in the bypassed reach. Consequently, a 40-year license term for the Eel Weir Project is appropriate.

The Director Orders:

¹⁰¹ 16 U.S.C. § 808(e) (2012).

¹⁰² See *Consumers Power Co.*, 68 FERC ¶ 61,077 at 61,383-84 (1994).

(A) This license is issued to S.D. Warren Company (licensee), for a period of 40 years, effective the first day of the month in which this order is issued, to operate and maintain the Eel Weir Hydroelectric Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in these lands, described in the project description and the project boundary discussion of this order.

(2) Project works consisting of: (a) a 1,350-foot-long dam, that includes: (i) a 900-foot-long, non-overflow concrete retaining wall and earth-fill east embankment that varies in height from a few inches to 20 feet; (ii) a 115-foot-long, 22-foot-high stone masonry and concrete spillway; (iii) a 35-foot-long, 17-foot-wide stone masonry and concrete river gatehouse with five 6.4-foot-high, 4.8-foot-wide wooden gates, (iv) a 260-foot-long stone masonry and earth-fill west embankment; and (v) a 40-foot-long, 12-foot-wide canal intake gatehouse on the west embankment with four 8.8-foot-high, 7-foot-wide wooden intake gates; (b) a 90-foot-long fish screen with $\frac{3}{4}$ -inch clear-bar spacing located immediately upstream of the canal intake gatehouse; (c) a 4,820-foot-long, 15-foot-deep earthen power canal; (d) a 40-foot-long, 19-foot-high canal waste gate structure with three 17-foot-wide, 11-foot-high steel slide gates; (e) a minimum flow gate located within each steel slide gate, with a maximum hydraulic capacity of 25 cubic feet per second (cfs); (f) the 28,771 acre Sebago Lake with a gross storage volume of 330,000 acre-feet and useable storage of 177,120 acre-feet at a normal maximum elevation of 266.65 feet mean sea level; (g) a 6,700-foot-long bypassed reach; (h) a 69-foot-wide, 32-foot-long powerhouse containing three turbine-generator units rated at 600 kilowatts (kW), for a total installed capacity of 1.8 MW; (i) a 35-foot-long, 32-foot-wide tailrace; (j) a 3.5-mile-long, 11-kilovolt transmission line connecting the powerhouse to S.D. Warren's Dundee Project (P-2942); and (k) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F shown below:

Exhibit A: The following sections of Exhibit A filed on March 29, 2002:

Page A-3 entitled "Project Description", pages A-11 through A-16 entitled "Project Structures", and Table A-1 on pages A-18 and 19.

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Exhibit F: The following Exhibit F drawing numbers 1001 and 1002 filed on March 29, 2002, and Exhibit F drawing number 1003 filed on December 1, 2014:

<u>Exhibit F Drawing</u>	<u>FERC No. 2984-</u>	<u>Description</u>
F-1	1001	Floor Plan and Elevation
F-2	1002	Powerhouse Building Sections
F-3	1003	Headworks Plan, Profile, and Sections

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project, all portable property that may be employed in connection with the project, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The Exhibits A and F described above are approved and made part of the license.

(D) This license is subject to the conditions submitted by the Maine Department of Environmental Protection under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1) (2012), as those conditions are set forth in Appendix A to this order.

(E) This license is also subject to the articles set forth in Form L-3, (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States" (*see* 54 F.P.C. 1792 *et seq.*), as reproduced at the end of this order, and the following additional articles:

Article 201. Administrative Annual Charges. The licensee must pay the United States annual charges, effective the first day of the month in which this license is issued, and as determined in accordance with provisions of the Commission's regulations in effect from time to time, to reimburse the United States for the cost of administration of Part I of the Federal Power Act. The authorized installed capacity for that purpose is 1.8 megawatts.

Article 202. Exhibit F Drawings. Within 45 days of the date of issuance of this license, the licensee must file the approved exhibit drawings in electronic file format on compact disks (CD).

Digital images of the approved exhibit drawings must be prepared in electronic format. Prior to preparing each digital image, the FERC Project-Drawing Number (i.e., P-2984-1001 through P-2984-1003) must be shown in the margin below the title block of

the approved drawing. The licensee must file two sets of exhibit drawings in electronic format on CD with the Secretary of the Commission, ATTN: OEP/DHAC.

Exhibit F drawings must be identified as Critical Energy Infrastructure Information (CEII) under 18 C.F.R. § 388.113(c). Each drawing must be a separate electronic file, and the file name must include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and a file extension in the following format [P-2984-1001, F-1, Description, MM-DD-YYYY.TIF]. All digital images of the exhibit drawings must meet the following format specification:

IMAGERY – black & white raster file
 FILE TYPE – Tagged Image File Format (TIFF), CCITT Group 4
 RESOLUTION – 300 dots per inch (dpi) desired (200 dpi minimum)
 DRAWING SIZE FORMAT – 24” X 36” (minimum), 28” X 40” (maximum)
 FILE SIZE – less than 1 megabyte desired

Article 203. Exhibit G Drawings. Within 90 days of the issuance date of the license, the licensee must file, for Commission approval, revised Exhibit G drawings that: (1) show three known reference points; (2) have been stamped by a registered land surveyor; (3) enclose within the project boundary all principal project works necessary for operation and maintenance of the project, including the upstream extent of Sebago Lake and the project’s existing transmission line connecting the project powerhouse to the Dundee Project (P-2942) powerhouse; and (4) show and label all lands within the project boundary owned by S.D. Warren or lands acquired by easement or lease. The Exhibit G drawings must comply with sections 4.39 and 4.41 of the Commission’s regulations.

Article 204. Amortization Reserve. Pursuant to section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project must be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee must set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee must deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee must set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee must maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves must be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios must be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity must be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 205. Headwater Benefits. If the license's project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee must reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license. The benefits will be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.

Article 206. Project Land Rights Progress Report. No later than four years after license issuance, the licensee must file a report with the Commission describing the status of acquiring title in fee or the rights for all the lands within the project boundary. The report must provide an overview map of each parcel and summary table identifying the licensee's rights over each parcel within the project boundary. The report must also include specific supporting documentation showing the status of the land rights on all parcels of land within the project boundary that: (1) have been acquired up to the date of filing of the report, including pertinent deeds, lease agreements, and/or bill of sale information that specifically verify the licensee's rights; and (2) the licensee's plan and schedule for acquiring all remaining project lands prior to the five-year deadline, including a history of actions taken, current owner information, the type of ownership to be acquired whether in fee or by easement, and the timeline for completing property acquisition.

Article 301. Start of Construction. The licensee must commence construction of the project works within two years from the issuance date of the license and must complete construction of the project within 5 years from the issuance date of the license.

Article 302. Reservoir Operation Report. At least 90 days prior to implementing project operation required by this license, the licensee must submit one copy to the Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer and two

copies to the Commission (one of these must be a courtesy copy to the Director, D2SI), of a report describing the effects of modifying project operations on local flooding and spillway adequacy of the project dam.

The report must include a flood routing study that evaluates the ability of the project to safely pass flows up to the Inflow Design Flood. The frequency that the non-overflow structures would be overtopped under the historical and limited drawdowns should be compared. The report must discuss if there would be an increased likelihood of low-lying structures located upstream and downstream of the reservoir being flooded under the new operating scenario. If necessary, the report must include a plan and schedule for performing any remedial measures necessary to ensure the continued safe operation of the project during high flows.

The licensee must not implement project operation required by this license until the D2SI – New York Regional Engineer determines that these altered project operations have no adverse impact on project safety and issues a letter indicating such.

Article 303. *Cofferdam and Deep Excavation Construction Drawings.* Before starting construction that requires cofferdams or deep excavations, the licensee must review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and must ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days before starting construction of any cofferdams or deep excavations, the licensee must submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer and two copies to the Commission (one of these copies must be a courtesy copy to the Commission's Director, D2SI), of the approved cofferdam and deep excavation construction drawings and specifications, and the letters of approval.

Article 304. *Contract Plans and Specifications.* At least 60 days prior to start of construction, the licensee must submit one copy of its final contract plans and specifications and supporting design report to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, and two copies to the Commission (one of these must be a courtesy copy to the Director, D2SI). The submittal must also include as part of preconstruction requirements: a Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sediment Control Plan. The licensee may not begin construction until the D2SI – New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

Article 305. As-built Drawings. Within 90 days of completion of construction of the facilities authorized by this license, including the upstream and downstream eel passage facilities and minimum flow gate modifications, the licensee must file for Commission approval, revised Exhibits A, F, and G, as applicable, to describe and show those project facilities as built. A courtesy copy must be filed with the Commission's Division of Dam Safety and Inspections (D2SI) - New York Regional Engineer, the Director, D2SI, and the Director, Division of Hydropower Administration and Compliance.

Article 306. Project Modification Resulting From Environmental Requirements. If environmental requirements under this license require modification that may affect the project works or operations, the licensee must be consult with the Commission's Division Dam Safety and Inspections – New York Regional Engineer. Consultation must allow sufficient review time for the Commission to ensure that the proposed work does not adversely affect the project works, dam safety, or project operation.

Article 401. Commission Approval, Notification, and Filing of Amendments.

(a) Requirement to File Plans for Commission Approval.

Various conditions of this license found in the Maine Department of Environmental Protection's (Maine DEP) water quality certification (certification) conditions (Appendix A) require the licensee to prepare plans in consultation with other entities and for approval by the Maine DEP, and implement specific measures without prior Commission approval. The following table indicates the deadline for filing the plans with the Commission for approval. The plans are listed below.

Maine DEP Certification Condition No.	Plan Name	Date Due
1(D)	Impoundment Water Level Monitoring Plan	Within 6 months of license issuance and at least 60 days prior to implementing the plan
2(E)	Minimum Flow Monitoring Plan	Within 6 months of license issuance and at least 60 days prior to implementing the plan
4(B)	Final Upstream Eel Passage Design and Operation Plan	Within 1 year of license issuance and at least 60 days prior to commencing construction of the upstream passage facilities

Maine DEP Certification Condition No.	Plan Name	Date Due
4(D)	Upstream Eel Passage Effectiveness Testing Plan	Within 1 year of license issuance and at least 60 days prior to operation of the upstream passage facilities
5(B)	Final Downstream Eel Passage Design and Operation Plan	Within 1 year of license issuance and at least 60 days prior to commencing construction of the downstream passage facilities
5(D)	Downstream Eel Passage Effectiveness Testing Plan	Within 1 year and at least 60 days prior to operation of the downstream passage facilities

The licensee must include with each plan filed with the Commission documentation that the licensee developed the plan in consultation with the Maine Department of Marine Resources and/or the Maine Department of Inland Fisheries and Wildlife and has received approval from the Maine DEP, as appropriate. The licensee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information. The Commission reserves the right to make changes to any plan submitted. Upon Commission approval, the plan becomes a requirement of the license, and the licensee must implement the plan or changes in project operations or facilities, including any changes required by the Commission.

(b) Requirement to File Reports.

Certain conditions of the Maine DEP's certification conditions require the licensee to file reports with other entities. These reports document compliance with requirements of this license and may have a bearing on future actions. Each such report must also be submitted to the Commission. These reports are listed in the following table:

Maine DEP Certification Condition No.	Description	Date Due
2(F)	Dissolved Oxygen Monitoring Report	By March 1 following each year of monitoring

Maine DEP Certification Condition No.	Description	Date Due
4(E)	Upstream Eel Passage Effectiveness Study Report(s)	By November 1 following each year of effectiveness testing
5(E)	Downstream Eel Passage Effectiveness Study Report(s)	By April 1 following each year of effectiveness testing
8(C)	Public Boat Access Study Report	Within 1 year of license issuance

The licensee must submit to the Commission documentation of any consultation with the aforementioned entities (section (a) of this article), and copies of any comments and recommendations made by any consulted entity in connection with each report. The Commission reserves the right to require changes to project operations or facilities based on the information contained in the report and any other available information.

(c) Requirement to Notify the Commission of Planned and Unplanned Deviations from License Requirements.

Maine DEP certification conditions 1(A), 2(A), 2(B), and 3(A) would allow the licensee to temporarily modify project operations for maintenance or construction activities, extreme hydrologic conditions, or electrical emergencies. The Commission must be notified prior to implementing such modifications, if possible, or in the event of an emergency, as soon as possible, but no later than 10 days after each such incident.

(d) Requirement to File Amendment Applications.

Some of the conditions in Appendix A contemplate the Maine DEP ordering unspecified, long-term changes to project operation or facilities based on new information or results of studies or monitoring or studies required by the certification, but do not appear to require Commission approval for such changes (e.g., modification of project operation to address water quality, modifications to upstream and downstream eel passage facilities, and modification of recreation facilities). Such changes may not be implemented without prior Commission authorization granted after the filing of an application to amend the license.

Article 402. Minimum Flow Release. The licensee must release a minimum flow of 125 cfs to the bypassed reach from April 1 through October 31 for the protection and enhancement of aquatic habitat and angler suitability. Minimum flows for the period from November 1 to March 31 and instructions for temporarily modifying minimum

flows are specified in water quality certification condition 2 required by ordering paragraph (D). Upon completion of the modifications to the minimum flow gates required in Article 403, the licensee must notify the Commission and begin to release 125 cfs into the bypassed reach from April 1 through October 31.

Article 403. *Minimum Flow Release Plan.* Within 3 months of license issuance, the licensee must file a Minimum Flow Release Plan for Commission approval. The plan must include, but not necessarily be limited to:

- (1) functional design drawings showing the proposed modifications to the minimum flow gates to release a 125-cfs minimum flow; and
- (2) a construction schedule.

The plan must be developed after consultation with the Maine Department of Environmental Protection, the Maine Department of Inland Fisheries and Wildlife, and the U.S. Fish and Wildlife Service. The licensee must include with the plan an implementation schedule, documentation of consultation, copies of recommendations on the completed plan after it has been prepared and provided to the agencies above, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific reasons.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan according to the approved schedule, including any changes required by the Commission.

Article 404. *Bypassed Reach Monitoring Plan.* Within 6 months of license issuance, the licensee must file a Bypassed Reach Monitoring Plan for Commission approval. The purpose of the plan is to monitor temperature in the two coldwater refugia identified in the bypassed reach.

The plan must be developed after consultation with the Maine Department of Environmental Protection, the Maine Department of Inland Fisheries and Wildlife, and the U.S. Fish and Wildlife Service. The licensee must include with the plan an implementation schedule, documentation of consultation, copies of recommendations on the completed plan after it has been prepared and provided to the agencies above, and specific descriptions of how the agencies' comments are accommodated by the plan. The

licensee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific reasons.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan according to the approved schedule, including any changes required by the Commission.

Article 405. *Flood Management Communication Protocol.* Within 6 months of license issuance, the licensee must file a protocol, for Commission approval, that describes how the licensee will communicate and coordinate with upstream pond owners in order to manage floods within the Presumpscot River basin.

The protocol must be developed after consultation with the Maine Department of Environmental Protection and the Maine Department of Inland Fisheries and Wildlife. The licensee must include with the protocol an implementation schedule, documentation of consultation, copies of recommendations on the completed protocol after it has been prepared and provided to the agencies above, and specific descriptions of how the agencies' comments are accommodated by the protocol. The licensee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the protocol with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific reasons.

The Commission reserves the right to require changes to the protocol. Implementation of the protocol must not begin until the licensee is notified by the Commission that the protocol is approved. Upon Commission approval, the licensee must implement the protocol according to the approved schedule, including any changes required by the Commission.

Article 406. *Reservation of Authority to Prescribe Fishways.* Authority is reserved to 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 pursuant to section 18 of the Federal Power Act.

Article 407. Land Use and Recreation Management Plan. Within 18 months of license issuance, the licensee must file a Land Use and Recreation Management Plan (LRMP) for Commission approval. The plan must include, but not necessarily be limited to:

(1) a description of how project land will be managed, including considerations for maintaining the aesthetic character of project land;

(2) measures for maintaining angling access to the Eel Weir bypassed reach including:

(a) a description of existing parking areas, paths, access areas, and signage to support angling access to the bypassed reach, including operation and maintenance measures; and

(b) maps showing and labeling all recreation facilities and areas used by anglers to access the bypassed reach;

(3) measures for improving public boat access to Sebago Lake based on the results of the public boat access study required by water quality certification condition 8; and

(4) revised Exhibit G drawing(s) showing a project boundary enclosing the recreation facilities and areas identified in items 2 and 3.

The licensee must prepare the plan after consultation with the Maine Department of Inland Fisheries and Wildlife, Maine Department of Environmental Protection, and town of Windham. The licensee must include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and town, and specific descriptions of how the agencies' and town's comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agencies and town to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan according to the approved schedule, including any changes required by the Commission.

Article 408. Programmatic Agreement and Historic Properties Management Plan. The licensee must implement the “Programmatic Agreement Between the Federal Energy Regulatory Commission and the State of Maine, State Historic Preservation Officer (Maine SHPO), for Managing Historic Properties that May be Affected by a License Issuing to S.D. Warren Company for the Continued Operation of the Eel Weir Hydropower Project in Cumberland County, Maine (FERC No. 2984-042),” executed on September 14, 2005. Pursuant to the requirements of this Programmatic Agreement, the licensee must file, for Commission approval, an HPMP within one year of issuance of this order that includes, in part, an updated Phase 0 analysis and a description of and schedules for further work to be completed at the project (e.g., Phase One, Phase Two, Phase Three surveys) as determined through consultation with the Maine SHPO. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license. If the Programmatic Agreement is terminated prior to Commission approval of the HPMP, the licensee must obtain approvals from the Commission and the Maine SHPO, before engaging in any ground-disturbing activities or taking any other action that may affect any historic properties within the project's area of potential effects.

Article 409. Use and Occupancy. (a) In accordance with the provisions of this article, the licensee must have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee must also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee must take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline;

and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee must require multiple use and occupancy of facilities for access to project lands or waters. The licensee must also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee must: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the impoundment shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project impoundment. No later than January 31 of each year, the licensee must file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary,

for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must file a letter with the Commission, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Commission's authorized representative, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensee must consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee must determine that the proposed use of the lands to be conveyed is not inconsistent with any approved report on recreational resources of an Exhibit E; or, if the project does not have an approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee must take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee must not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the

protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project must be consolidated for consideration when revised Exhibit G drawings would be filed for approval for other purposes.

(g) The authority granted to the licensee under this article must not apply to any part of the public lands and reservations of the United States included within the project boundary.

(F) The licensee must serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

(G) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2014). The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order. The licensee's failure to file a request for rehearing must constitute acceptance of this order.

Ann F. Miles
Director
Office of Energy Projects

Form L-3
(October, 1975)

**FEDERAL ENERGY REGULATORY COMMISSION
TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED
MAJOR PROJECT AFFECTING NAVIGABLE
WATERS OF THE UNITED STATES**

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Energy Regulatory Commission, in the

region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights or occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a nonpower licensee under the provisions of Section 15

of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing,

coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full

reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere

with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the

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license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 27. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 28. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

APPENDIX A

Maine Department of Environmental Protection
Water Quality Certification Conditions
Issued August 30, 2011

1. WATER LEVELS

- A. Except as temporarily modified by (1) approved maintenance activities or fishway construction, (2) extreme hydrologic conditions, as defined below, (3) emergency electrical system conditions, as defined below, or (4) agreement between the applicant, the Department, and appropriate state and/or federal agencies, lake levels shall be managed within a target range between 266.65 feet msl and 262.0 feet msl, with lake levels above or below this range triggering increased or decreased flow releases, respectively, from the project dam, and with the goal of achieving a level of 266.0 feet msl (0.65 feet below spillway crest elevation) between May 1 and June 15 annually, in accordance with the applicant's lake level management plan and operating parameters for Sebago Lake dated May 26, 2011, as revised June 6, 2011.
- B. "Extreme Hydrologic Conditions" means the occurrence of events beyond the applicant's control such as, but not limited to, abnormal precipitation, extreme runoff, flood conditions, ice conditions or other hydrologic conditions such that the operational restrictions and requirements contained herein are impossible to achieve or are inconsistent with the safe operation of the Project.
- C. "Emergency Electrical System Conditions" means operating emergencies beyond the applicant's control which require changes in flow regimes to eliminate such emergencies which may in some circumstances include, but are not limited to, equipment failure or other temporary abnormal operating conditions, generating unit operation or third-party mandated interruptions under power supply emergencies, and orders from local, state, or federal law enforcement or public safety authorities.
- D. The applicant shall, within 6 months of issuance of a New License for the project by FERC or upon such other schedule as established by FERC, submit plans for providing and monitoring the impoundment water levels required by Part A of this condition. These plans shall be reviewed by and must receive approval of the Department.

2. MINIMUM FLOWS

- A. Except as temporarily modified by (1) approved maintenance activities or fishway construction, (2) extreme hydrologic conditions, as defined below, (3) emergency electrical system conditions, as defined below, or (4) agreement between the applicant, the Department, and appropriate state and/or federal agencies, a total minimum flow of 270 cfs (16,200 cfm) shall be released from the project at all times, except that a total minimum flow of 408 cfs (24,500 cfm) shall be released from the project between June 1 and September 30 annually whenever spillage is required at the downstream Dundee and Gambo Dams to maintain dissolved oxygen levels in the Presumpscot River.
- B. Except as temporarily modified by (1) approved maintenance activities, (2) extreme hydrologic conditions, as defined below, (3) emergency electrical system conditions, as defined below, or (4) agreement between the applicant, the Department, and appropriate state and/or federal agencies, an instantaneous minimum flow of 75 cfs (4,500 cfm) shall be released into the bypassed river reach (Eel Weir Bypass) below the project dam at all times, and the occurrence of flow releases greater than 300 cfs (18,000 cfm) into the Eel Weir Bypass shall be minimized. The flow released into the Eel Weir Bypass shall be counted as part of the total minimum flow release specified in Part A of this condition.
- C. "Extreme Hydrologic Conditions" means the occurrence of events beyond the applicant's control such as, but not limited to, abnormal precipitation, extreme runoff, flood conditions, ice conditions or other hydrologic conditions such that the operational restrictions and requirements contained herein are impossible to achieve or are inconsistent with the safe operation of the Project.
- D. "Emergency Electrical System Conditions" means operating emergencies beyond the applicant's control which require changes in flow regimes to eliminate such emergencies which may in some circumstances include, but are not limited to, equipment failure or other temporary abnormal operating conditions, generating unit operation or third-party mandated interruptions under power supply emergencies, and orders from local, state, or federal law enforcement or public safety authorities.
- E. The applicant shall, within 6 months of issuance of a New License for the project by FERC or upon such other schedule as may be established by FERC, submit plans for providing and monitoring the minimum flow releases required by Parts A and B of this condition. These plans shall be reviewed by and must receive approval of the Department.

F. The applicant shall, in compliance with Condition 6 of the April 30, 2003 water quality certification (included at the end of this Appendix) for the Presumpscot River Hydro Projects, and in accordance with an approved plan, continue to monitor dissolved oxygen levels in the Presumpscot River to determine the effectiveness of the required spillage at the Dundee and Gambo Projects, in combination with the new minimum flow requirement from the Eel Weir Project, as set forth in Part A of this condition, in meeting Class B dissolved oxygen standards in the Presumpscot River above Westbrook. After reviewing the study results, and after notice to the applicant and opportunity for hearing, the Department reserves the right to require such changes in the minimum flow required by this order and/or such other measures as may be deemed necessary to meet Class B dissolved oxygen standards in the Presumpscot River from Dundee Dam to Saccarappa Dam under dry weather conditions.

3. LANDLOCKED SALMON SPAWNING SEASON FLOW CAP

- A. Except as temporarily modified by (1) approved maintenance activities, (2) extreme hydrologic conditions, as defined below, (3) emergency electrical system conditions, as defined below, or (4) agreement between the applicant, the Department, and the Department of Inland Fisheries and Wildlife, flows from the project shall be capped at 1,000 cfs (60,000 cfm) during the landlocked salmon spawning season from October 16 through November 15 annually.
- B. "Extreme Hydrologic Conditions" means the occurrence of events beyond the applicant's control such as, but not limited to, abnormal precipitation, extreme runoff, flood conditions, ice conditions or other hydrologic conditions such that the operational restrictions and requirements contained herein are impossible to achieve or are inconsistent with the safe operation of the Project.
- C. "Emergency Electrical System Conditions" means operating emergencies beyond the applicant's control which require changes in flow regimes to eliminate such emergencies which may in some circumstances include, but are not limited to, equipment failure or other temporary abnormal operating conditions, generating unit operation or third-party mandated interruptions under power supply emergencies, and orders from local, state, or federal law enforcement or public safety authorities.
- D. Upon notification from the Department of Inland Fisheries and Wildlife that there is evidence that project flows are attracting landlocked salmon to the outlet dam during the spawning season, the Department reserves the right, after notice to the applicant and opportunity for hearing, to reopen this certification for consideration

of making such changes in the flow cap required by Part A of this condition as may be deemed necessary to protect landlocked salmon during their annual spawning runs.

4. UPSTREAM EEL PASSAGE

- A. Upstream eel passage facilities shall be installed and operational at the Eel Weir Project within 2 years following the issuance of a new FERC license for the project.
- B. The applicant shall, at least 60 days prior to construction or upon such other schedule as established by FERC, submit final design, location, and operational plans for the upstream eel passage facilities required by Part A of this condition, prepared in consultation with the Department of Marine Resources. These plans shall be reviewed by and must receive approval of DEP prior to construction. In reviewing the plans, the DEP will consider the recommendations of DMR.
- C. The applicant shall, in consultation with the Department of Marine Resources, conduct a study or studies to determine the effectiveness of the upstream eel passage facilities required by this condition.
- D. The applicant shall, concurrent with the commencement of facilities operation or upon such other schedule as established by FERC, submit plans for a study or studies to determine the effectiveness of the upstream eel passage facilities required by Part A of this condition, prepared in consultation with the Department of Marine Resources. These plans shall be reviewed by and must receive the approval of DEP prior to implementation. In reviewing the plans, the DEP will consider the recommendations of DMR.
- E. The applicant shall, in accordance with a schedule set forth in the study plan or upon such other schedule as established by FERC, submit the results of the upstream eel passage effectiveness study or studies, along with any recommendations for changes in the design and/or operation of any eel passage facilities installed pursuant to this condition.
- F. The applicant shall be responsible for taking such actions as are needed to effectively pass eels upstream through the project. After reviewing the results of the effectiveness study or studies, and after notice to the applicant and opportunity for hearing, the Department reserves the right to require reasonable changes in the design and/or operation of the upstream eel passage facilities installed pursuant to

this condition as may be deemed necessary to effectively pass eels upstream through the project.

5. DOWNSTREAM EEL PASSAGE

- A. Downstream eel passage facilities shall be installed and/or operational measures to provide downstream eel passage shall be implemented at the Eel Weir Project within 2 years following the issuance of a new FERC license for the project.
- B. The applicant shall, at least 60 days prior to construction/implementation or upon such other schedule as established by FERC, submit final design, location, and operational plans for the downstream eel passage facilities and/or operational measures required by Part A of this condition, prepared in consultation with the Department of Marine Resources. These plans shall be reviewed by and must receive approval of DEP prior to construction. In reviewing the plans, the DEP will consider the recommendations of DMR.
- C. The applicant shall, in consultation with the Department of Marine Resources, conduct a study or studies to determine the effectiveness of the downstream eel passage facilities and/or operational measures required by this condition.
- D. The applicant shall, concurrent with the installation and/or implementation of downstream eel passage facilities/operational measures or upon such other schedule as established by FERC, submit plans for a study or studies to determine the effectiveness of the downstream eel passage facilities and/or operational measures required by Part A of this condition, prepared in consultation with the Department of Marine Resources. These plans shall be reviewed by and must receive the approval of DEP prior to implementation. In reviewing the plans, the DEP will consider the recommendations of DMR.
- E. The applicant shall, in accordance with a schedule set forth in the study plan or upon such other schedule as established by FERC, submit the results of any downstream eel passage effectiveness study or studies, along with any recommendations for changes in the design and/or operation of any passage facilities installed and/or the operational measures implemented pursuant to this condition.
- F. The applicant shall be responsible for taking such actions as are needed to effectively pass eels downstream through the projects. After reviewing the results of the effectiveness study or studies, and after notice to the applicant and opportunity for hearing, the Department reserves the right to require changes in

the design and/or operation of the downstream eel passage facilities installed and/or the operational measures implemented pursuant to this condition as may be deemed necessary to effectively pass eels downstream through the project.

6. ANADROMOUS/RESIDENT SPECIES FISH PASSAGE

Upon notification from the Department of Inland Fisheries and Wildlife and/or the Department of Marine Resources that circumstances or conditions warrant the installation of fish passage facilities at the Eel Weir Dam, the Department reserves the right, after notice to the applicant and opportunity for hearing, to reopen this certification for consideration of requiring the installation of such fish passage facilities as may be deemed necessary to pass anadromous and/or resident fish species, including but not limited to landlocked Atlantic salmon, upstream and downstream through the project area.

7. LAKE WATER QUALITY

Upon any future determination by the Department that the water quality of Sebago Lake is declining and that the operation of the Eel Weir Project, as approved by this certification and as conditioned by the new FERC license for the project, may be causing or contributing to this decline in water quality, the Department reserves the right, after notice to the applicant and opportunity for hearing, to reopen this certification for consideration of requiring such modification of the lake level management plan in effect for the project as may be deemed necessary to ensure that the operation of the project does not cause or contribute to any decline in the water quality of Sebago Lake.

8. PUBLIC BOAT ACCESS

- A. The applicant shall provide improved public boat access to Sebago Lake.
- B. The applicant shall, in consultation with the Department of Inland Fisheries and Wildlife, conduct a study to evaluate the options for providing improved public boat access to Sebago Lake.
- C. The applicant shall, within 1 year following the issuance of a new FERC license for the project, or upon such other schedule as established by FERC, submit a study report evaluating the options for providing improved public boat access to Sebago Lake, including any necessary parking facilities, along with any proposal(s) for providing such access. This report shall include comments and

recommendations from the Department of Inland Fisheries and Wildlife for improving public boat access to the lake.

- D. After reviewing the report on public boat access, and after notice to the applicant and the Department of Inland Fisheries and Wildlife, and after opportunity for hearing, the Department will reopen this certification to require such improved public boat access to Sebago Lake as is deemed necessary and appropriate to meet public recreational demand.

9. LIMITS OF APPROVAL

This approval is limited to and includes the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variations from the plans and proposals contained in said documents are subject to the review and approval of the Department prior to implementation.

10. COMPLIANCE WITH ALL APPLICABLE LAWS

The applicant shall secure and appropriately comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements and orders required for the operation of the project, in accordance with the terms of this certification.

11. EFFECTIVE DATE

This water quality certification shall be effective concurrent with the effective date of the new license issued for the project by the Federal Energy Regulatory Commission.

12. SEVERABILITY

In the event that any provision, or part thereof, of this certification is declared to be unlawful by a reviewing court, the remainder of the certification shall remain in full force and effect, and shall be construed and enforced in all respects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

Document Content(s)

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