



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION  
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

BLACK BEAR HYDRO PARTNERS, LLC ) MAINE WATERWAY DEVELOPMENT AND  
OLD TOWN, PENOBSCOT COUNTY ) CONSERVATION ACT  
STILLWATER HYDROELECTRIC PROJECT ) WATER QUALITY CERTIFICATION  
L-16773-33-O-M (approval) ) MINOR REVISION

Pursuant to the provisions of the *Water Classification Program*, 38 M.R.S. §§ 464–470, the *Maine Waterway Development and Conservation Act*, 38 M.R.S. §§ 630–637, the *Administrative Rules For Hydropower Projects*, 06-096 CMR 450 (effective November 2, 2017), and Section 401 of the Federal Water Pollution Control Act (a.k.a. Clean Water Act), the Department of Environmental Protection has considered the application of BLACK BEAR HYDRO PARTNERS, LLC with the supportive data, agency review comments, and other related materials on file and finds the following facts:

1. APPLICATION SUMMARY:

A. Project Description

The Stillwater Hydroelectric Project (SHP or Project) is operated by Black Bear Hydro Partners, LLC (BBHP or Black Bear) and is located on the Stillwater Branch of the Penobscot River in the City of Old Town, Maine. The dam is a 1,712-foot-long concrete gravity dam consisting of several different sections varying in length and configuration, including the west and east bypass channels, which are separated by a small island. The dam ranges from a few inches to 22 feet in height. The Project creates an impoundment with a surface area of approximately 191 acres at normal full pond elevation of 94.65 feet, which includes flashboard modifications made in 2005. The impoundment extends upstream approximately 3 miles.

B. Summary

In Department Order #L-16773-33-F-M, dated January 13, 2005, the Department approved replacing the existing flashboards, modifying the minimum bypass flow requirements and modifying the fish passage requirements of the existing SHP. Special Condition #1.A. of the Order reads as follows, in pertinent part:

“1. Minimum Flows

- A. Except as temporarily modified by (1) approved maintenance activities, (2) extreme hydrological conditions, as defined below, (3) emergency electrical system conditions, as defined below, or (4) agreement between the applicant and appropriate state and/or federal agencies, the project shall be operated as run-of-river (outflow equals inflow) while passing minimum flows of 20 cfs into the west bypass channel and 50 cfs into the east bypass channel.”

Special Condition #1.A. provides minimum flows into both the east and west bypass channels downstream of the Stillwater dam. Black Bear's Operation and Flow Compliance Monitoring Plan submitted to FERC on June 14, 2013, indicated that the 20 cfs minimum flow to the west bypass channel would be conveyed by a 1.6-foot-wide notch in the flashboards, while the 50 cfs flow to the east bypass channel would be provided via the downstream fishway at Stillwater Powerhouse B or by operating at least one unit at Powerhouse B when the fish passage was not in operation.

On May 31, 2017, with support from the National Marine Fisheries Service (NMFS), the US Fish and Wildlife Service (USFWS), the Maine Department of Marine Resources (MDMR), and the Maine Department of Inland Fisheries and Wildlife (MDIFW), known collectively as the resource agencies, as well as The Penobscot Indian Nation (PIN), BBHP requested a temporary variance in minimum flow requirements at the Project in order to reduce flows in the vicinity of the upstream eel ladder and to perform upstream eel passage studies. The goal of this variance was to reduce flow through the flashboard gap at the west channel and to minimize associated false attraction of juvenile eels, thereby better directing eels to the entrance of the upstream eel ladder. Additionally, other alterations were made to the upstream eel passage with the intent of improving passage effectiveness. Upstream passage through the eel ladder markedly improved in 2017 following these flow modifications.

In response to Special Condition # 1.A, BBHP submitted an application to modify the minimum flow requirements associated with the SHP, proposing to eliminate specific minimum flow location requirements and direct the entire 70 cfs total minimum flow through the Stillwater B downstream fishway or powerhouse located in the east channel. The proposal would eliminate the requirement to pass 20 cfs at the west channel bypass in order to eliminate false attraction and improve flow conditions around the upstream eel passage entrance.

The applicant proposes to modify Condition #1.A as follows:

“1. Minimum Flows

- A. Except as is temporarily modified by (1) approved maintenance activities, (2) extreme hydrological conditions, as defined below, (3) emergency electrical system conditions, as defined below, or (4) agreement between the applicant and appropriate state and/or federal agencies, the project shall be operated as run-of-river (outflow equals inflow) while passing a minimum flow of 70 cfs into the bypass area below the Stillwater Dam.”

2. FINDINGS:

The proposed flow modification at the SHP is a minor change and will not significantly affect any issues identified during previous Department reviews of the project site. The Project application with supporting materials was reviewed by the Division of Environmental Assessment (DEA) staff who had no comment or concerns regarding changes to minimum flows at the Project. From 2013 through 2019 the applicant conducted studies and worked in

consultation with the NMFS, USFWS, the PIN, MDMR, and the MDIFW to develop the flow modifications proposed for the Project. The modifications were agreed to by the resource agencies and the PIN.

Based on its review of the application, the Department finds the requested minor revision to be in accordance with all relevant Departmental standards.

THEREFORE, the Department APPROVES the application of BLACK BEAR HYDRO PARTNERS, LLC to modify minimum flow location requirements at the Stillwater Hydroelectric Project SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
3. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-16773-33-F-M, and subsequent orders, and are incorporated herein.

DONE AND DATED IN AUGUSTA, MAINE, THIS 28<sup>th</sup> DAY OF October, 2019.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
Gerald D. Reid, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.  
CS/L#16773-33-O-M/ATS#85133



## Maine Waterways Development and Conservation Act

### Standard Conditions of Approval

1. **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. All variances from the plans and proposals contained in said documents are subject to the review and approval of the Board or Commissioner prior to implementation.
2. **Noncompliance.** Should the project be found, at any time, not to be in compliance with any of the conditions of this approval, or should the permittee construct or operate this project in any way other than specified in the application or supporting documents, as modified by the conditions of this approval, then the terms of this approval shall be considered to have been violated.
3. **Compliance with all Applicable Laws.** The permittee shall secure and appropriately comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation.
4. **Inspection and Compliance.** Authorized representatives of the Board, Commission or the Attorney General shall be granted access to the premises of the permittee at any reasonable time for the purpose of inspecting the construction or operation of the project and assuring compliance by the permittee with the conditions of this approval.
5. **Initiation and Completion of Construction.** If construction is not commenced within 3 years and completed within 7 years from the date of issuance of this permit, this approval shall lapse, unless a request for an extension of these deadlines has been approved by the Board or Commission.
6. **Construction Schedule.** Prior to construction, the permittee shall submit a final construction schedule for the project to the Commissioner or Director.
7. **Approval Included in Contract Bids.** A copy of this approval must be included in or attached to contract bid specifications for the project.
8. **Approval Shown to Contractor.** Work done by a contractor pursuant to this approval shall not begin before a copy of this approval has been shown to the contractor by the permittee.
9. **Notification of Project Operation.** The permittee shall notify the Commissioner or director of the commencement of commercial operation of the project within 10 days prior to such commencement.
10. **Assignment or Transfer of Approval.** This approval shall expire upon the assignment or transfer of the property covered by this approval unless written consent to transfer this approval is obtained from the board or Commission. To obtain approval of transfer, the permittee shall notify the Board or Commission 30 days prior to assignment or transfer of property which is subject to this approval Pending Board or Commission determination on the application for a

transfer or assignment of ownership of this approval, the person(s) to whom such property is assigned or transferred shall abide by all of the terms and conditions of this approval. To obtain the Board's or Commission's approval of transfer, the proposed assignee or transferee must demonstrate the financial capability and technical ability to (1) comply with all terms and conditions of this approval and (2) satisfy all other applicable statutory criteria. A "transfer" is defined as the sale or lease of property which is the subject of this approval or the sale of 50 percent or more of the stock of or interest in a corporation or a change in a general partner of a partnership which owns the property subject to this approval.