PETITION
FOR SURRENDER OF FERC EXEMPTION
(Project No. 8417)
Old Sparhawk Mill Hydro

Sparhawk, LLC
81 Bridge Street
Yarmouth, Maine 04096
October 31, 2018
INITIAL STATEMENT

Sparhawk, LLC (“Petitioner”) hereby petitions the Federal Energy Regulatory Commission (FERC) pursuant to 18 C.F.R. § 4.102 to surrender whatever rights it might possess in the exemption for FERC Project No. 8417 (the “FERC Exemption”). In 1985, FERC granted an exemption from licensing for a small hydropower facility located on the Royal River in Yarmouth, Maine (the “Project”). As discussed more fully below, in 2014, Petitioner acquired the Mill, which included the powerhouse. The dam, however, is owned by the Town of Yarmouth, and the fishway was installed and has been maintained by the State of Maine. There are no operable turbines remaining in the Mill, and the Project has not generated power in more than three years. The FERC Exemption for the Project does not appear to have been formally transferred to nor intentionally acquired by Petitioner when it acquired the Mill, and Mr. Jagger, the principal of Sparhawk, LLC, does not believe he or Petitioner possess the necessary rights from the Town to operate the Project. Petitioner does not intend to acquire such rights nor to recommence hydro operations at the Mill. Accordingly, to the extent that Petitioner might have rights in the Exemption, to avoid confusion and ensure clarity moving forward, it seeks to surrender whatever rights it might possess in the FERC Exemption.

THE PROJECT FACILITIES

The Project is located on the Royal River in Yarmouth, Maine. It includes the following: (1) an 8-foot-high, 140-foot-long dam; (2) a 9-acre reservoir; (3) an approximate 215-foot-long, 7-foot-diameter penstock; (4) the powerhouse with 3 generating units; (5) an 18-foot-wide, 80-foot-long tailrace channel; (6) a buried transmission line; and, (7) appurtenant facilities.¹ The dam is located approximately 130 feet upstream from the Bridge Street bridge and approximately

¹ FERC Exemption at Appendix A, j. The FERC Exemption is attached as Exhibit 1.
2,000 feet upstream from the head of tide line in the vicinity of the I-95 bridge. The headgate is located on the east abutment of the dam and controls flow to the penstock. The penstock extends from the dam on the east side of the river to the powerhouse, which is located just below Bridge Street. A fishway is located on the west abutment of the dam. An aerial photograph of the Project obtained from the Town’s website and a photograph of the Mill (but not showing the dam, which is located upstream from the Mill) are attached as Exhibit 3.

**BACKGROUND**

In 2014, Petitioner acquired the Sparhawk Mill in Yarmouth, Maine. The Mill is an approximately 20,000 square-foot four-story brick building located on the Royal River. The Mill was built in 1857 by the Royal River Manufacturing Company and for many years was under common ownership with the Bridge Street dam. In the 1970s, however, the Bridge Street dam was conveyed to the Town, and the Mill was conveyed to an unrelated entity. In the mid-1980s, the Mill property was revitalized for hydroelectric production and was permitted by the Federal Regulatory Energy Commission (FERC) pursuant to an exemption (P-8417) and the Maine Department of Environmental Protection (DEP). At the same time, the Town entered into a lease agreement with the then-Mill owner regarding flowage and other rights necessary to operate P-8417.

Mr. Jagger is not aware of and does not believe that there is any lease between Petitioner and the Town conveying the necessary interests for Petitioner to operate a hydroelectric facility on the Mill property. Petitioner is not currently generating hydropower at the Mill and has not done so since or shortly after it acquired the Mill. Currently, a number of small businesses occupy space in the Mill.

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2 See November, 1984 DEP Permit issued to the Old Sparhawk Mill Hydro Project (the “DEP Permit”), attached as Exhibit 2.
PETITION TO SURRENDER

Petitioner does not believe that it currently holds P-8417, nor did Petitioner intentionally acquire the exemption when it acquired the Mill in 2014. To the extent that Petitioner may be deemed to have an ownership interest in P-8417 by virtue of having acquired the Mill or otherwise, without waiver of any claim or argument that it does not hold the Exemption, Petitioner hereby petitions to surrender the Exemption in accordance with 18 C.F.R. § 4.102. Because the facility has not operated in more than three years, there are no operable turbines present on the site, Petitioner does not possess rights to all of the necessary Project components, and Petitioner does not intend to recommence hydro operation, FERC could terminate the exemption. See 18 C.F.R. § 6.4.

A. Ownership of The Bridge Street Dam and Sparhawk Mill Property

The Bridge Street dam was constructed in the 1700s to provide hydropower to an adjacent mill. In 1968, Philip and Paul Stultz acquired both the dam and the Sparhawk Mill property. In March, 1974, the Stultzs conveyed the Bridge Street dam and certain related facilities, water power, riparian, littoral and flowage rights associated with the dam to the Town of Yarmouth (the “Town”). In July, 1974, the Town entered into an agreement with the State of Maine Department of Marine Resources (DMR) granting DMR the exclusive right to build, operate and maintain a fish ladder at the dam. The agreement had an initial term of 25 years, and may have been renewed for a second 25-year term.

In June, 1974, the Stultzs conveyed the Sparhawk Mill property to P. Andre LeMaistre and Thomas Yale. As discussed below, Messrs. LeMaistre and Yale redeveloped the site for

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3 The deed conveying ownership of the dam and related facilities to the Town is attached as Exhibit 4.
4 A copy of the lease between the Town and DMR is attached as Exhibit 5. Petitioner does not know whether there is any current agreement between the Town and DMR regarding fish passage facilities at the dam.
hydropower use and obtained State and Federal permits to do so. Since then, the Sparhawk Mill site has been conveyed several times. In 2003, the property was conveyed to Sparhawk Mill, Inc., in 2006 it was conveyed to Sparhawk Mill Associates, LLC, in 2012 it was conveyed to Sparhawk Properties, LLC, and in 2014 it was conveyed to Sparhawk, LLC, the current owner.\(^5\) Allan Jagger is the principal of Sparhawk, LLC. Prior to acquisition of the Mill in 2014, Mr. Jagger had no involvement with the property and has had no ownership interest in any of the entities that previously owned the Mill.

In or around 1983, the Town leased the Bridge Street dam, related facilities, water power, riparian, littoral and flowage rights to P. Andre LeMaistre and Thomas L. Yale (doing business as Old Sparhawk Mill Co.) for hydropower development.\(^6\) Over time, the initial lease was renewed and/or modified and, in December, 2012, the Town entered into a new lease agreement with Sparhawk Properties, LLC (then the owner of the Sparhawk Mill) allowing Sparhawk Properties, LLC to operate the dam for hydropower use. The lease was a year-to-year lease. Petitioner does not believe there is any current lease between it and the Town regarding rights to operate hydropower. To the best of his knowledge, Mr. Jagger has never individually or through Petitioner assumed or otherwise acquired the rights of Sparhawk Properties, LLC under the 2012 lease, which is the last known lease agreement regarding flowage and other rights associated with the dam.\(^7\) Nor has Mr. Jagger or Petitioner entered into any other lease with the Town regarding flowage or other rights associated with the dam.

B. The Licensed Hydropower Facility

\(^5\) A copy of the deed by which Sparhawk, LLC acquired the Mill is attached as Exhibit 7.
\(^6\) A copy of the recorded Memorandum of Lease is attached as Exhibit 6.
\(^7\) To date, neither the Town nor Petitioner has located documentation regarding termination of the 2012 lease, although no rent has been paid to the Town since on or around July, 2014. Petitioner and other interested parties have always assumed that if hydro were to recommence, Petitioner (or a third party) would have to negotiate the necessary rights to do so from the Town, which owns the dam.
In November, 1984, the Maine DEP issued a Maine Waterway and Development and Conservation Act and Water Quality Certification to Old Sparhawk Mill Co. for redevelopment of the existing Bridge Street dam for the purpose of generating hydroelectric power (“DEP Permit”). As described in the DEP Permit, the project included rehabilitation of the existing headgate and penstock cradles, installation of a new steel penstock, excavation of existing intake and tailrace channels, and installation of three turbine-generator units within the mill building.

On May 24, 1985, FERC issued an order granting exemption from licensing of a small hydroelectric project for what was referred to as the Old Sparhawk Mill located on the Royal River (the “Exemption”). The FERC project included the dam, the reservoir, the penstock, a proposed powerhouse with generating units, an existing tailrace channel, a proposed transmission line, and appurtenant facilities.

The Exemption was issued to Messrs. Yale and LeMaistre on May 24, 1985. In 2006, Mr. LeMaistre notified FERC that the facility had been sold to a new entity, Sparhawk Mill Associates, LLC. When Petitioner acquired the Sparhawk Mill in 2014, neither Mr. Jagger nor Petitioner were informed of the terms and conditions of the Exemption or provided a copy of the Exemption. See 18 C.F.R. § 4.106(i) (before transferring any property interests in the exempt project the exemption holder must inform the transferee of the terms and conditions of the exemption). Likewise, Petitioner is not aware of documentation that the prior exemptee ever notified FERC of the transfer. In any event, as demonstrated above, Petitioner does not believe it

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8 The DEP Permit is attached as Exhibit 2.
9 DEP Permit at 1.
10 The Exemption is attached as Exhibit 1.
11 Exemption at Appendix A, j.
has right, title or interest to critical Project elements and therefore could not acquire or maintain the Exemption unless and until it obtained such rights. See 18 C.R.R. § 4.31(c)(2)(ii).

C. Disposition and Restoration of the Project Works and Lands

No action is proposed to dismantle or otherwise restore any aspect of the powerhouse, which Petitioner owns. All of the hydroelectric equipment has now been removed from the powerhouse. Additionally, steps have already been taken to reduce to the maximum extent practicable any flow of water through the penstock, which remains in place. The penstock does not present a hazard, and Petitioner does not believe it needs to be removed. There is some uncertainty as to who owns the penstock, but Mr. Jagger and Petitioner will cooperate fully if and to the extent it requires removal at a later date. If the penstock is removed care will have to be taken to minimize any adverse impact to the Mill. Likewise, although it is beyond the scope of this petition, if the Town decides to remove the dam, it will be critical to coordinate with the Mill and take steps to ensure that the Mill is not adversely impacted by such action, which could threaten the integrity of the structure.

D. Fish Passage

Although also beyond the scope of this petition, there has been substantial discussion by interested persons of fish passage at the dam and therefore it is addressed here for informational purposes only. As noted above, the Town owns the dam and DMR has the exclusive right to install, operate and maintain fish passage there. DMR installed a fishway in 1974 and for many years stocked and monitored fish returns at the Bridge Street dam. The fishway was already in

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12 Petitioner had been exploring the feasibility of redevelopment of the Project. In response to a request from FERC for information, Petitioner requested an extension of time to respond so that it could continue to explore the feasibility of redevelopment and also evaluate the scope of its legal rights to the FERC Project. Redevelopment does not appear feasible.

13 A copy of a summary prepared by DMR is attached as Exhibit 8.
existence and was being managed by DMR when the Exemption was issued. The Exemption (and DEP Permit and associated 401 Water Quality Certification) required minimum flows and appropriate screening at the intake to divert downstream migrating fish and at the tailrace channel to exclude upstream migrating fish.\textsuperscript{14} The screening was installed and the flows are not controlled by Petitioner. To the extent that there are minimum flow requirements that are not being met, the Mill has no ability to increase flows to facilitate fish passage. Water is no longer intentionally diverted through the penstock (although there may be residual de minimis flows through the penstock), and water levels at the fishway are unaffected by the Mill, and remain subject to the rights of others and natural conditions.

As discussed below, the Maine Department of Inland Fisheries and Wildlife and Department of Maine Resources have stated they have no objection to Applicant’s proposed surrender of the FERC exemption.

For a number of years, the Town and various environmental organizations and other stakeholders have been evaluating potential alternatives to maintaining the dam and fish passage, including potential removal of the dam. Petitioner is willing to participate in those discussions, but any decision to remove the dam will require comprehensive analysis of the potential impact to the Mill and appropriate measures to mitigate any structural or other damage that might result.

E. Consultation Process

In accordance with the requirements of 18 C.F.R. § 4.102(b)(1), on July 10, 2018, Petitioner provided a draft of this petition to the Indian tribes, Federal and State agencies, and other stakeholders identified on Exhibit 9. The responses to that consultation are included as Exhibit 10. The Maine Department of Inland Fisheries and Wildlife and Maine Department of

\textsuperscript{14} Exemption Conditions (1984 Department of Interior, Fish and Wildlife Service Comments) March 18, 1985 letter from DEP to FERC.
Marine Resources stated they did not object to the proposed surrender of the FERC Exemption and did not request any conditions be included as part of the surrender. The Maine Historic Preservation Commission concluded there would be no historic properties (architectural or archeological) affected by the proposal. No other comments were received from State agencies. No substantive comments or requested conditions were provided by any Indian tribe or Federal agency.

The Sebago Chapter of Trout Unlimited, Conservation Law Foundation, Maine Rivers, and Royal River Restoration Trust submitted joint comments (collectively, “TU Comments”). The TU Comments requested that the Petitioner renounce all rights under the December 2012 lease agreement between the Town and the prior owner of the Sparhawk Mill. It is unclear how renunciation of rights under that lease, which involves a third party not subject to the FERC Exemption, would advance the public interest or is necessary to ensure safe and appropriate disposition of any of the FERC facilities. Moreover, as set forth above, Mr. Jagger does not believe that he or Petitioner have assumed any rights or obligations under that lease. Nonetheless, if FERC concludes that renunciation of rights, if any, under that lease are required as a condition of surrender, Petitioner does not object to doing so.

The TU Comments also suggest that removal of the penstock, to the extent Petitioner owns it, should be required as a condition of surrender. Importantly, the penstock does not present any environmental or other risks. Its removal would, however, result in at least temporary impacts including, potentially, to the river. Thus even if it could be determined that Petitioner owned the penstock and adjacent areas required for removal (and as TU concedes, ownership is unclear), removal is not necessary for public safety or to advance any environmental objective. The generating equipment referenced in the TU Comments has been
removed and there are no toxic chemicals associated with hydroelectric operation present at the site.

Finally, the TU Comments suggest that the issue of fish passage at the dam "be addressed" before the Petition is acted upon. It is undisputed that the dam is owned by the Town and pre-dated the FERC Exemption. To the extent that fish passage was or is an issue, it is not as a result of hydroelectric power that occurred previously or of the activities authorized by the FERC Exemption. Granting the Petition will not adversely impact the Town’s ability to control the dam and fish passage facilities, including to address the issues raised by TU if the Town wished to do so. Requiring Petitioner to solve a problem it did not cause and over which it has absolutely no control would most certainly violate the “realistic and pragmatic” guidance that governs FERC’s actions and that is referenced in the TU Comments.

CONCLUSION

For the reasons discussed above, Petitioner requests surrender of any rights it might possess in the FERC Exemption.

Dated: 10/31/18

Sparhawk, LLC
By: [Signature]
EXHIBIT 1
Office Director Orders

Thomas L. Yale and P. Andre LeMaistre

Project No. 8417-001

Order Granting Exemption From Licensing of a Small Hydroelectric Project of 5 Megawatts or Less
(Issued May 24, 1985)

Quentin A. Edson, Director, Office of Hydropower Licensing.

The Applicant filed an application for exemption from all or part of Part I of the Federal Power Act (Act) pursuant to 18 C.F.R. Part 4 Subpart K (1980) implementing in part Section 408 of the Energy Security Act (ESA) of 1980 for a project as described in the attached public notice.

Notice of the application was published in accordance with Section 408 of the ESA and the Commission's regulations and comments were requested from interested Federal and State agencies including the U.S. Fish and Wildlife Service and the State Fish and Wildlife Agency. All comments, protests and motions to intervene that were filed have been considered. No agency has any objection relevant to issuance of this exemption.

Standard Article 2, included in this exemption, requires compliance with any terms and conditions that Federal or State fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources. The terms and conditions referred to in Article 2 are contained in any letters of comment by these agencies which have been forwarded to the Applicant in conjunction with this exemption.

Should the Applicant contest any terms or conditions that were proposed by Federal or State agencies in their letters of comment as being outside the scope of Article 2, the Commission shall determine whether the disputed terms or conditions are outside the scope of Article 2.

Based on the terms and conditions required by Federal and State fish and wildlife agencies, the environmental information in the application for exemption, other public comments, and staff's independent analysis, issuance of this order is not a major Federal action significantly affecting the quality of the human environment.

It is ordered that:

(A) The Old Sparhawk Mill Project No. 8417 as described and designated in Thomas L. Yale and P. Andre LeMaistre's application filed on December 3, 1984, is exempted from all of the requirements of Part I of the Federal Power Act, including licensing, subject to the standard articles in §4.106, of the Commission's regulations, 18 C.F.R. §4.106, 45 Fed. Reg. 76,115 (November 18, 1980), and the following Special Article(s).

Article 6. Any exempted small hydroelectric power project that utilizes a dam which is more than 33 feet in height above streambed, as defined in 18 C.F.R. § 12.31(c) of this chapter, impounds more than 2,000 acre-feet of water, or has a significant high hazard potential, as defined in 33 C.F.R. Part 222, is subject to the following provisions of 18 C.F.R. Part 12;

(i) Section 12.4(b)(1)(i) and (ii), (2)(i), (iii)(A) and (B), (iv), and (v);

(ii) Section 12.4(c);
(iii) Section 12.5;

(iv) Subpart C; and

(v) Subpart D.

For the purposes of applying these provisions of 18 C.F.R. Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

**2 (B) This order is final unless a petition appealing it to the Commission is filed within 30 days from the date of its issuance, as provided in Section 385.1902 of the Commission's regulations, 18 C.F.R. §385.1902 (1983).

Appendix A

Notice of Application

(Issued March 5, 1985)

a. Type of Application: Exemption (5 MW or Less)

b. Project No. 8417-001

c. Date Filed: December 3, 1984

d. Applicant: Thomas L. Yale and P. Andre LeMaistre

e. Name of Project: Old Sparhawk Mill

f. Location: On the Royal River in Cumberland County, Maine

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. §§ 2705 and 2708 as amended

h. Contact Person: Thomas L. Yale, Old Sparhawk Mill, 25 Bridge Street, Yarmouth, Maine 04096

i. Comment Date: April 16, 1985

j. Description of Project: The proposed project would consist of: (1) the existing 8-foot-high, 140-foot-long dam; (2) the existing 9-acre reservoir; (3) a proposed 215-foot-long, 7-foot-diameter steel penstock; (4) a proposed powerhouse which will contain 3 generating units, each 90-kW, for a total installed capacity of 270 kW; (5) the existing 18-foot-wide, 80-foot-long tailrace channel will be dredged; (6) a proposed 100-foot-long, buried transmission line; and (7) appurtenant facilities.

The Applicant estimates the average annual energy production to be 1.0 GWh.

[Note: Remainder of notice omitted in printing.]
Federal Energy Regulatory Commission

Footnotes
3 Authority to act on this matter is delegated to the Director, Office of Hydropower Licensing, under §375.314 of the Commission's regulations, 49 Fed. Reg. 369 (1984)(Errata issued July 27, 1984)(to be codified at 18 C.F.R. § 375.314). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. §385.1902 (1983). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.
4 An exemption from licensing granted by this Commission does not serve as any basis for restricting hunting and fishing access to the waterway involved except to the extent required for public safety purposes.
5 Environmental Assessment, The Old Sparhawk Mill Project, FERC Project No. 8417-001—Maine, Division of Environmental Analysis, Office of Hydropower Licensing, Federal Energy Regulatory Commission, May 15, 1985. This document is available in the Division of Public Information and in the Commission's public file associated with the proceeding.

31 FERC P 62239 (F.E.R.C.), 1985 WL 64820
EXHIBIT 2
March 18, 1985

Dear Mr. Plumb:

This Department has reviewed your Notice of Exemption and the actual application of Thomas L. Yale and P. Andre LeMaistre for the Old Sparhawk Mill Project, located on the Royal River in the Town of Yarmouth, Cumberland County, Maine.

This Department's Order issuing a hydropower development permit and Water Quality Certification for the proposed project is enclosed (DEP #L-010345-35-A-N, dated November 28, 1984).

In summary, we have approved the construction and operation of the project subject to the following special conditions:

1. Except as specifically limited by conditions beyond the applicant's control, water levels in the impoundment shall be maintained at elevation 36.6 feet (spillway crest).

2. An instantaneous minimum flow of 50 cfs or inflow, whichever is less, shall be maintained from the project at all times, except that an additional 20 cfs (for a total of 70 cfs) or inflow, whichever is less, shall be maintained from the project for the periods from May 1 to July 15 and from September 1 to November 30 annually.

3. First priority to an instantaneous minimum flow of 13 cfs shall be provided to the fishway.

4. Acceptable plans for the monitoring of flows and compliance with minimum flow requirements shall be formulated and followed.
5. Acceptable plans for the secure disposal of all construction and excavation spoils shall be formulated and followed.

6. Acceptable fish passage facilities for screening downstream migrating fish from the intake structures and for excluding upstream migrating fish from the tailrace channel shall be constructed and shall be operational with the commencement of project operation.

We recommend that the foregoing special conditions be included in the Articles of any Exemption granted for the project. Please make reference to the enclosed Order for our analysis of the project and the precise language of our conditions.

If you should have any questions regarding these comments, please contact Dana Murch of the Department's staff at 207-289-2111.

Sincerely,

[Signature]

Henry E. Warren, Commissioner
DEPARTMENT OF ENVIRONMENTAL PROTECTION

NEW/DPN

Enclosure

cc: Thomas L. Yale
Fred Springer, Project Management, FERC
Elizabeth Higgins, Region 1, US EPA
Gordon Beckett, US Fish & Wildlife Service
Ruth Rufus, National Marine Fisheries Service
Derrill Cowen, Maine Office, US Geological Survey
Pursuant to the provisions of Title 38, M.R.S.A., Section 636 and U. S. Public Law 92-500, Section 401 (as amended), the Board of Environmental Protection has considered the application of OLD SPANHAWK MILL CO. with its supportive data, staff summary, agency review comments, and other related materials on file and finds the following facts:

1. PROJECT DESCRIPTION

The applicant proposes the redevelopment of the existing Bridge Street Dam on the Royal River in Yarmouth, Maine, for the purpose of generating hydroelectric power.

EXISTING:

The dam is located approximately 130 feet upstream from the Bridge Street bridge and approximately 2,000 feet upstream from the head-of-tide line in the vicinity of the I-95 bridge. The concrete dam is approximately 8 feet in height and 140 feet in length and includes a headgate at the east abutment and an operational fishway at the west abutment. A series of abandoned penstock cradles lead from the headgate to the Sparhawk Mill building, where an abandoned turbine room is located.

The dam creates an impoundment with a surface area of approximately 9 acres at a full-pond elevation of 36.6 feet m.s.l. The estimated average annual flow at the project site is 273 cfs from a drainage area of 142 square miles.

PROPOSED:

The applicant proposes to utilize the hydroelectric potential of the existing dam by: rehabilitating the existing headgate and penstock cradles; installing a new steel penstock measuring 7 feet in diameter by 190 feet in length; excavating existing intake and tailrace channels; and installing three turbine-generator units within the mill building, rated a total generating capacity of 270 kW at a net head of 17.5 feet, and appurtenant equipment. The facility would have a hydraulic capacity ranging from 26 cfs to 240 cfs. Project power would be sold to Central Maine Power Company for distribution.

The applicant proposes to utilize a temporary timber cofferdam and a temporary rock-fill access road to facilitate construction, repair, and excavation activities. Approximately 1,000 cubic yards of gravel and sand are to be excavated from the intake and tailrace areas.
The applicant proposes to operate the facility as a run-of-river hydroelectric project, with water levels in the impoundment to be maintained at the crest of the dam to the maximum extent possible. Applicant proposes to install such additional upstream and downstream fish passage facilities as may be requested by State and Federal fisheries agencies. Applicant proposes to maintain an instantaneous minimum flow of 35 cfs or inflow to the project area, whichever is less, to be divided as follows: 13 cfs through existing fishway; 17 cfs as additional fishway attraction flow; and 5 cfs through proposed downstream fish migration facility.

Construction activities are scheduled to begin following the issuance of all required local, state, and federal approvals and to be complete within 12 months.

2. **JURISDICTION:**

The proposed redevelopment qualifies as the "redevelopment" of a "hydropower project" under the terms of Title 38, M.R.S.A., Section 633.

The project is subject to the jurisdiction of the Federal Energy Regulatory Commission. The applicant has filed an Application for Exemption to construct and operate the Old Sparhawk Mill Project (FERC No. 8417). Water Quality Certification is, therefore, considered, pursuant to Section 401 of the Federal Clean Water Act.

The applicant currently owns in fee or holds a lease to all lands, structures and water rights necessary for the project.

3. **FINANCIAL CAPACITY AND TECHNICAL ABILITY:**

The total project cost is approximately $250,000. The applicant has provided a statement from a financial institution indicating an intent to fund the project.

The applicant has retained the services of a number of experienced technical consultants to assist in the design, construction and operation of the project.

4. **SAFETY:**

No significant project impacts on the safety of the public have been identified.

5. **PUBLIC BENEFITS:**

The project would result in significant economic benefits to the public in the form of direct construction employment, increased energy security, increased local, state and federal tax revenues. No significant economic losses to the public have been identified.
6. TRAFFIC MOVEMENT:

No significant project impacts on traffic movement have been identified.

7. MAINE LAND USE REGULATION COMMISSION:

No part of the proposed project lies within the jurisdiction of the Land Use Regulation Commission; therefore, consistency with LURC zoning is not applicable.

8. ENVIRONMENTAL MITIGATION:

The applicant proposes to realize the environmental benefits and to mitigate or avoid the adverse environmental impacts of the project by:

- maintaining stable water levels in the impoundment;
- maintaining a minimum flow from the dam of 35 cfs or inflow, whichever is less;
- maintaining adequate flow in the existing fishway;
- maintaining attraction flow to the existing fishway;
- installing an upstream fish screen in the tailrace to guide migrating fish to the fishway;
- installing a downstream fish screen and passage facility;
- and implementing appropriate erosion and sedimentation control measures.

The applicant has not submitted any specific plans for the disposal of construction and excavation spoils.

9. ENVIRONMENTAL AND ENERGY CONSIDERATIONS:

A. NATURAL ENVIRONMENT: WATER QUALITY:

The Revel River is currently classified as having Class D-2 water from its origin to the head of tidewater. The project waters are thus judged to be suitable for recreational boating and fishing, for fish and wildlife habitat, and for other uses including water contact recreation.

The estimated 7 day average low flow which has a 1 in 10 year recurrence interval (7010) at the project site is 24 cfs.

No significant project benefits to soil stability, water quality, coastal or inland wetlands, or the natural environment of the river have been identified.

The project could result in significant harm to water quality and the natural environment unless a) water levels and flows are adequate to maintain existing water quality standards and designated uses and b) adequate measures are taken to dispose of construction and excavation spoils.
B. **FISH AND WILDLIFE RESOURCES:**

The Royal River currently supports a number of warm water and cold water fish species, including brook trout, brown trout, smallmouth bass, eel, alewives, and American shad. Wildlife species that are common to the southern coastal Maine area are likely to be inhabitants or transients in the project area.

The Department of Marine Resources (DMR) is engaged in an on-going program to restore anadromous fish species to the Royal River. Currently, migrating alewives are trapped at the existing fishway and are trucked for stocking in other rivers, primarily the Little Androscoggin, as well as in the Royal River. In addition, DMR has been stocking American shad in the Royal River since 1978, and a natural run of spawning shad has been established in the tidal river downstream from the dam.

The Department of Inland Fisheries and Wildlife has been stocking brook trout in the Royal River since 1976 in an attempt to develop a sport fishery for adult sea-run brown trout.

The Atlantic Sea Run Salmon Commission has an long-term goal of restoring Atlantic Salmon to their historic habitat in the Royal River drainage.

Currently, the project dam provides both upstream and downstream passage opportunities for migrating anadromous fish.

No significant project benefits to fish and wildlife resources have been identified.

The project could result in significant harm to fish and wildlife resources unless a) water levels and flows are adequate to maintain aquatic environment, b) adequate upstream and downstream fish passageway facilities are provided, and c) adequate measures are taken to control erosion and sedimentation during and following project construction.

C. **HISTORIC AND ARCHAEOLOGIC RESOURCES:**

The Old Sparhawk Mill building has been deemed eligible for listing the National Register of Historic Places.

No significant project impacts on historic or archaeologic resources have been identified.
D. PUBLIC RIGHTS OF ACCESS AND USE:

Currently, the river in the project area receives substantial canoe fishing, and passive recreational use. Existing recreational facilities include a municipal day-use park along the western shore of the project impoundment.

No significant project impacts on public recreational access to and of the Royal River have been identified.

E. FLOOD BENEFIT/FLOOD HAZARD:

No significant project impacts on existing flood plains or flood risk have been identified.

F. ENERGY BENEFITS:

The project would result in hydroelectric energy benefits in that the project would increase in-state hydroelectric generating capacity by 270 MW and would generate an estimated average annual energy output of 1,000,000 KWH, potentially displacing 1,667 barrels of oil or 463 tons of coal annually.

BASED on the above Findings of Fact, the Board concludes that the proposed SPARHAWK MILL HYDRO PROJECT will satisfy the requirements of Title 38, M.R.S.A., Section 636 and U. S. Public Law 92-500, Section 401, for the issuance of a Maine Waterway Development and Conservation Act Permit and Water Quality Certification in that:

1. The applicant has the financial capacity and technical ability to undertake the project.
2. The applicant has made adequate provisions for protection of public safety.
3. The project will result in significant economic benefits to the public.
4. The applicant has made adequate provisions for traffic movement.
5. The project is not within the jurisdiction of the Maine Land Use Planning Commission.
6. The applicant has made reasonable provisions to realize the environmental benefits and mitigate the adverse environmental impacts of the project provided that:

A. Water levels are maintained at spillway crest elevation;
OLD SPARHAWK MILL COMPANY
Yarmouth, Maine, Cumberland County
OLD SPARHAWK MILL HYDRO PROJECT
FL-010345-35-A-N

6 MAINE WATERWAY DEVELOPMENT AND CONSERVATION ACT and WATER QUALITY CERTIFICATION FINDINGS OF FACT AND ORDER

B. A minimum flow of 50 cfs or inflow, whichever is less, is maintained from the dam at all times, except that for the periods from May 1 to July 15 and September 1 to November 30, a minimum flow of 70 cfs or inflow, whichever is less, is maintained from the dam;

C. Adequate upstream and downstream fish passage facilities are constructed and are operational concurrent with the commencement of project operation; and

D. Adequate measures are taken to control erosion and sedimentation during construction and operation of the project.

7. The advantages of the project are greater than the direct and cumulative impacts over the life of the project provided that the project is constructed and operated in accordance with the terms of Conclusion #6.

THEREFORE, the Board APPROVES the application of OLD SPARHAWK MILL CO. to construct and operate the OLD SPARHAWK MILL HYDRO PROJECT in YARMOUTH, Maine and GRANTS certification that there is a reasonable assurance that the activity will not violate applicable Water Quality Standards, subject to the following conditions:

1. Except as irreconcilably limited by inflows to the impoundment, by temporary abnormal operating conditions, by unit operation or interruption under power supply emergencies, or by order of state, local or federal authorities, where all such conditions are beyond the applicant's control and commencing with project operation, water levels in the impoundment shall be maintained at elevation 36.6 feet.

2. Except as irreconcilably limited by order of state, local or federal authorities, and commencing with project construction, an instantaneous minimum flow of 50 cfs, or a flow equal to inflow when such inflow is less than 50 cfs, shall be maintained from the dam at all times, except that the periods from May 1 to July 15 and September 1 to November 30 annually an instantaneous minimum flow of 70 cfs, or a flow equal to inflow when such inflow is less than 70 cfs, shall be maintained from the dam. First priority to a flow of 13 cfs shall be provided to the fishway. The applicant must submit the specific details of a plan to monitor flows and to comply with this minimum flow requirement prior to project operation within 1 year of the issuance of this permit, whichever comes first. Such a plan shall be reviewed and must receive approval of the Commissioner prior to project operation.

3. The applicant shall take all necessary measures to insure that its activities and the activities of its agents do not result in measurable erosion of soils on the site during the construction and operation of the project. The applicant must submit the details of a plan to securely dispose of all construction and excavation spoil prior to project construction or within 1 year of the issuance of this permit, whichever comes first. This plan shall be reviewed and must receive approval of Commissioner prior to project construction.
4. Fish passage facilities for screening downstream migrating fish from the intake structure and for excluding upstream migrating fish from the tailrace channel shall be constructed and shall be operational with the commencement of project operation. The applicant must submit final design and construction plans for these facilities prior to project operation or within 1 year of the issuance of this permit, whichever comes first. The plans shall be reviewed and must receive approval of the Department of Marine Resources and the Commissioner prior to project operation.

5. The applicant shall notify the Department of the completion of project construction and the commencement of operation within 10 days following such completion and commencement.

6. 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 Department prior to implementation.

7. The applicant 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.

8. A copy of this permit must be included in or attached to contract bid specifications for the project.

9. Construction shall commence with 2 years from the date of the granting of this approval unless a license has been issued for the project within 2 years by the Federal Energy Regulatory Commission, in which case construction shall commence in accordance with the terms of that license.

If construction is not commenced within the authorized period of time, as is applicable, this approval shall lapse and the applicant shall reapply the Board for a new approval. The applicant may not commence construction of the project until a new approval is granted. Reapplications for approval shall state the reasons why the construction was not begun within the authorized period of time, as is applicable, and the reasons why the applicant will be able to begin construction within 2 years from the date of the granting of a new approval, if such approval is granted. Reapplications for approval may include information submitted in the initial application by reference.
OLD SPARHAWK MILL COMPANY
Yarmouth, Maine, Cumberland County
OLD SPARHAWK MILL HYDRO PROJECT

10. If construction of the project upon the terms and conditions hereof is completed and the operation of the project is not commenced within 5 yr from the date of the granting of this approval, the Board may reexamine approval and impose such additional terms or conditions or prescribe other necessary corrective actions as it deems necessary to respond to significant changes in circumstances which may have occurred within the year period.

DONE AND DATED AT AUGUSTA, MAINE, THIS 28TH DAY OF NOVEMBER, 1984.

BOARD OF ENVIRONMENTAL PROTECTION

BY: 

SAMUEL N. ZAITLIN, Chairman

PLEASE NOTE ATTACHED SHEET FOR APPEALS PROCEDURES......
EXHIBIT 3
EXHIBIT 4
6271

Know all Men by these Presents,

That we, Philip E. Stultz and Paul L. Stultz, both of Westbrook in the County of Cumberland and State of Maine,

in consideration of one dollar and other valuable considerations,

paid by Town of Yarmouth, a body corporate and politic, situated in Yarmouth in said County and State, its successors and assigns,

the receipt whereof we do hereby acknowledge, do hereby release, bargain, sell and convey, and forever quit-claim unto the said

Town of Yarmouth, its successors and assigns forever,

All right, title and interest of Grantors in and to the Bridge Street Dam, so-called, located northerly of Bridge Street on the Royal River in said Yarmouth, and the penstocks, water power, riparian, littoral and flowage rights associated therewith, but expressly excepting and reserving from this conveyance, any flowage or other rights, the exercise of which would result in damage to the remaining premises of Grantors, their heirs and assigns, or any substantial increase in the level of the waters adjacent to or resting upon said remaining premises.

Grantors hereby grant to Grantee and its successors and assigns an easement to pass over the premises of the Grantors, with men and equipment, to said dam for the purpose of maintaining, operating and inspecting said dam and any fishway constructed therein and to use such area of Grantors in the immediate vicinity of said dam as may reasonably be needed to maintain, operate and inspect said dam and any fishway constructed therein, provided, however, that Grantee, its successors and assigns, hereby agree to keep the premises of the Grantors in their original condition, insofar as is reasonably possible, after the construction of any such fishway has been completed and during and after any such maintenance, operation and inspection and any fishway constructed therein.

Being a portion of the premises conveyed to Grantors by deed of Charlton S. Smith, Receiver, dated February 15, 1968 and recorded in Cumberland-County Registry of Deeds, Book 3032, Page 16.

This conveyance is subject to the following mortgages given by Grantors:


(2) To First Manufacturer's National Bank of Lewiston and Auburn, Trustee under the Stultz Electric Works-Stultz, Inc. Pension Trust, dated February 26, 1970 and recorded in
said Registry of Deeds, Book 3123, Page 484, which was assigned to Joseph G. Hakanson, as Trustee as aforesaid by assignment dated August 15, 1973 and recorded in said Registry of Deeds, Book 3508, Page 99.

(3) To First Manufacturer's National Bank of Lewiston and Auburn, Trustee under the Stultz Electric Works-Stultz, Inc. Pension Trust, dated March 16, 1971 and recorded in said Registry of Deeds, Book 3163, Page 90, which was assigned to Joseph G. Hakanson, as Trustee as aforesaid by assignment dated August 15, 1973 and recorded in said Registry of Deeds, Book 3508, Page 99.
To have and to hold the same, together with all the privileges and appurtenances thereunto belonging, to the said Town of Yarmouth, its successors and assigns forever.

In Witness Whereof, the said Philip E. Stultz and Orra Stultz, wife of said Philip E. Stultz, and Bertha D. Stultz, and

wife of the said Paul L. Stultz,

joining in this deed as Grantors, and relinquishing and conveying all rights by descent and all other rights in the above described premises, have hereto set our hand and seals this 20th day of March in the year of our Lord one thousand nine hundred and seventy-four.

Signed, Sealed and Delivered
in presence of

Paul L. Stultz
Philip E. Stultz
Orra Stultz
Bertha D. Stultz

State of Maine
Cumberland

Personally appeared the above named

Philip E. Stultz

and acknowledged the above instrument to be his free act and deed.

Before me,

APR 16 1974
REGISTRAR OF DEEDS. CUMBERLAND COUNTY, MAINE
Received at 15 SO PF, and recorded on BOX 357/PAGE 182. W. W. Noy Ten. Register

NOTARY PUBLIC
EXHIBIT 5
LEASE

This Indenture, made this 31st day of July, 1974, between TOWN OF YARMOUTH, a municipal corporation located at Yarmouth, County of Cumberland and State of Maine (hereinafter referred to as the "Lessor"), and the STATE OF MAINE, acting herein by the Commissioner of Marine Resources, hereunto duly authorized (hereinafter referred to as the "Lessee").

WITNESSETH:

That for valuable consideration, receipt and sufficiency of which is acknowledged and for the purpose of opening up a greater spawning area for the propagation of alewives and other sea-run species, the Lessor, for itself, its successors and assigns, does hereby DEMISE, GRANT, LEASE and LET unto the Lessee and its successors, for the term of twenty-five (25) years from the date first written above, the exclusive right to build, maintain, and operate a fishway in the Bridge Street Dam, so-called, on the Royal River in the Town of Yarmouth, County of Cumberland and State of Maine, which Dam is described in a deed from Stultz et al to Town of Yarmouth, dated March 20, 1974 and recorded in the Cumberland County Registry of Deeds in Book 3531, Page 182. The Lessor further grants to the Lessee the exclusive option to renew and extend this LEASE for an additional twenty-five (25) years next after the aforementioned period of twenty-five (25) years. The option may be exercised by sending written notice of the intention to extend anytime within two (2) years of the expiration of the first twenty-five (25) year term of this LEASE. The notice shall be deemed delivered when deposited in the U. S. mail, postage pre-paid, at the last address of Lessor known to Lessee.
The Lessor further agrees to permit the Lessee and its agents and designees to travel over the property of the Lessors, with men and equipment, to the site of said fishway for the purpose of building, maintaining, operating and inspecting said fishway and to use such area owned by the Lessor in the immediate vicinity of said fishway as may reasonably be needed to build, maintain, operate and inspect said fishway; provided, however, that the Lessee hereby agrees to leave the property of the Lessor in its original condition, insofar as is reasonably possible, after the construction of the fishway has been completed and after any necessary maintenance, operation and inspection has been accomplished.

The Lessor also agrees that, insofar as the Lessor is able to control the same, a sufficient portion of the upstream natural flow of water will be allowed to pass through the fishway to allow for the passage of adult and young sea-run alewives and other sea-run species.

ATTEST:

TOWN OF YARMOUTH

STATE OF MAINE

Subscribed and sworn to, before me, this 22nd day of July, AD 1974

Notary Public

STATE OF MAINE
CUMBERLAND, SS.

July 30, 1974.

Personally appeared the above-named James G. Pratt, Town Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said TOWN OF YARMOUTH.

Before me,

[Signature]

Justice of the Peace
Notary Public

STATE OF MAINE
CUMBERLAND, SS.

July 22, 1974.

Personally appeared Spencer Appollonio for the State of Maine and acknowledged the foregoing instrument to be the free act and deed of said STATE OF MAINE and his free act and deed in his said capacity.

Before me,

[Signature]

Justice of the Peace
Notary Public

APPROVED AS TO FORM

July 24, 1974

[Signature]

Assistant Attorney General
MEMORANDUM OF LEASE

05605

LESSOR: Town of Yarmouth, Maine

LESSEE: P. Andre LeMaistre and Thomas L. Yale,
doing business as Old Sparhawk Mill Co.

DATE OF LEASE: July 19, 1983

PREMISES: See Exhibit A, attached hereto and made a part
hereof.

TERM: Fifteen (15) years from the date of execution of
the lease or upon expiration of the original term
of the FERC license issued in connection with the
Premises, whichever occurs first.

OPTION TO EXTEND TERM: Lease may be renewed for a total of
two (2) additional terms of ten (10) years each.

OPTION TO PURCHASE: None.

DATED the 10th Day of Feb., 1984

WITNESS:

[Signatures]

OLD SPARHAWK MILL CO

By: [Signature]

[Signature]

TOWN OF YARMOUTH, MAINE

By: [Signature]

[Signature]
Description of the Premises and Water Rights:
The Bridge Street Dam, so-called, located northerly of
Bridge Street on the Royal River in the Town of Yarmouth,
Maine, and the penstocks, water power, riparian, littoral
and flowage rights associated therewith; being a portion of
the Premises conveyed to the Town of Yarmouth by deed of
Philip E. Stultz and Paul L. Stultz, dated March 20, 1974,
and recorded in the Cumberland County Registry of Deeds in
Book 3531, Page 182.
STATE OF MAINE
CUMBERLAND, ss.

February 10, 1984

Personally appeared the above-named P. Andre LaBrie, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Old Sparhawk Mill Company.

Before me,

[Signature]
Notary Public
PATRICIA A. MERRILL

STATE OF MAINE
CUMBERLAND, ss.

February 10, 1984

Personally appeared the above-named Thomas L. Yule, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Old Sparhawk Mill Company.

Before me,

[Signature]
Notary Public
PATRICIA A. MERRILL

STATE OF MAINE
CUMBERLAND, ss.

February 10, 1984

Personally appeared the above-named Osmond C. Bondy, in his capacity as Town Manager, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Town of Yarmouth, Maine.

Before me,

[Signature]
Notary Public
PATRICIA A. MERRILL

RECEIVED
1984 FEB 23 AM 9:44

RECORDED REGISTRY OF DEEDS
CUMBERLAND COUNTY

[Signature]
QUITCLAIM DEED
(with covenant)

KNOW ALL MEN BY THESE PRESENTS, that, SPARHAWK PROPERTIES, LLC, a Maine limited liability company with a mailing address of c/o Herbert A. Piper, 100 Wild Fern Drive, Longwood, Florida 32779 for and in consideration of one dollar and other valuable consideration paid by SPARHAWK, LLC, a Maine limited liability company with a mailing address of 40 O’Brion Street, Portland, 04101, (“Grantee”), the receipt whereof is hereby acknowledged, does hereby grant unto the said Grantee, its successors and assigns forever, with Quitclaim Covenant, the property more particularly described on Exhibit A attached hereto.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be signed this 31st day of July, 2014.

Sparhawk Properties, LLC

Herbert A. Piper
Its Manager

State of Maine
Cumberland (county) July 31, 2014

Personally appeared the above-named Herbert A. Piper, duly authorized Manager of Sparhawk Properties, LLC and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the said Sparhawk Properties, LLC.

Before me,

Timothy H. Norton
Notary Public/Attorney-at-Law

Timothy H. Norton
Printed Name
EXHIBIT A

(Three parcels)

PARCEL-ONE:

A certain lot or parcel of land with the buildings, boiler house, shed and other buildings thereon, situated in the Town of Yarmouth, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at the intersection of the thread of Royal River and the southwesterly projection of the center line of Bridge Street;

Thence northeasterly by said projection of the center line of Bridge Street to the abutment on the easterly shore of Royal River;

Thence continuing northeasterly with the center line of Bridge Street one hundred thirty-five and thirty-seven hundredths feet (135.37');

Thence South, 29° 25' East by other land now or formerly of Acorn Corp., one hundred ninety-seven and thirty-seven hundredths feet (197.37') to a stake at other land now or formerly of Acorn Corp., which stake is twenty-eight and eighty-eight hundredths feet (28.88') northwesterly of a cement block located near the northwesterly corner of an old wooden shop building;

Thence southwesterly by other land now or formerly of said Acorn Corp. about eighty-one and fifty-nine hundredths feet (81.59') to a stone wall near the northeasterly bank of Royal River;

Thence continuing southwesterly by a projection of the last bound to the thread of Royal River;

Thence northwesterly by the thread of Royal River to the point of beginning; Excepting and reserving that portion of the above-described premises conveyed to the Town of Yarmouth by deed dated March 20, 1974, recorded in said Cumberland County Registry of Deeds, Book 3531, Page 182.

PARCEL TWO:

A certain lot or parcel of land with buildings thereon situated in Yarmouth, in the County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point in the center line of Bridge Street (formerly known as Kimball Road) which is one hundred thirty-five and thirty-seven hundredths feet (135.37') distant northeasterly from the center of an abutment at the end of said street near the easterly shore of Royal River;

Thence running South 29° 25' East by land conveyed to Suburban Investors, Inc. one hundred ninety-seven and thirty-seven hundredths feet (197.37');

Thence turning and running North 60° 35' East by other land now or formerly of the Acorn Corporation eighty-five and sixty-one hundredths feet (85.61');
Thence turning and running North 29° 25’ West by other land now or formerly of the Acorn Corporation one hundred ninety-seven and thirty-seven hundredths feet (197.37’') to a point in the center line of said Bridge Street;

Thence turning and running South 60° 35’ West by the center line of said street eighty-five and sixty-one hundredths feet (85.61’’) to the point of beginning.

PARCEL THREE

A certain lot or parcel of land on the southeasterly side of Bridge Street in the Town of Yarmouth, County of Cumberland and State of Maine bounded and described as follows:

Beginning at a point on the southeasterly side of Bridge Street at the northeasterly corner of land conveyed to the Grantee and other by Thomas Payson by warranty deed dated September 3, 1987 and recorded in the Cumberland County Registry of Deeds in Book 7963, Page 340; thence southeasterly by said Payson land one hundred seventy feet (170’) more or less to the southeasterly corner thereof; thence southwesterly by said Payson property and property conveyed to the Grantee and other by Phillip E. Stultz, et al. by deed dated June 24, 1974 and recorded in said Registry in Book 3568, Page 115, one hundred sixty-eight feet (168’) more or less to the thread of the Royal River; thence southeasterly by the thread of the Royal River four hundred seventy feet (470’) more or less to land owned by the Residents of Yankee Drive; thence northeasterly by said Residents land and the rear of lots 15, 14 and 13 as appears on a plan of Yankee Drive, three hundred eighty-six feet (386’) more or less to land conveyed to Romeo J. Charron, et al by deed recorded in said Registry in Book 2511, Page 170; thence northwesterly by said Charron land one hundred twenty-nine (129’) feet, more or less to land conveyed to Romeo J. Charron, et al by deed recorded in said Registry in Book 2020, Page 498; thence southwesterly by said last described Charron land and land conveyed to Richard C. Lindahl, et al by deed recorded in said Registry in Book 9480, Page 19, ninety-seven and nine tenths feet (97.9’) more or less to the southerly corner of said Lindahl property; thence northwesterly by said Lindahl property two hundred eighty-two feet (282’) more or less to Bridge Street; thence southwesterly by Bridge Street seventy-four feet (74’) more or less to said Grantee’s land and the point of beginning.

The premises conveyed herein are also described, as Lots 62 and 64 on Map 33 of the Assessor’s Maps of the Town of Yarmouth, Maine, revised April 1, 1992, on file at the Yarmouth Town Office, Yarmouth, Maine.

Excepting and reserving that portion of the above described premises conveyed to the Town of Yarmouth, Maine by deed dated November 23, 1994 and recorded in said Cumberland County Registry of Deeds in Book 11731, Page 235.

Being the same premises conveyed to Sparkhawk Properties, LLC by Sparhawk Mill Associates, LLC by deed dated November 16, 2012 and recorded in the Cumberland County Registry of Deeds in Book 30141, Page 150.

Also hereby conveying, but without warranty or representation:

1. All of Grantor’s right, title and interest in the dam and flowage rights in the Royal River relating to the so-called “Old Sparhawk Mill” and the “Old Sparhawk Mill” hydroelectric facility in the Town of Yarmouth, Maine; and a certain Agreement dated July 19, 1983 as amended by Amendment to Agreement dated February 24, 1992, by and between the “Old
Sparhawk Mill Co.” and the Town of Yarmouth, Maine, relating to such dam and flowage rights in the Royal River, a memorandum of which is recorded in said Registry in Book 6393, Page 94.

2. All of Grantor’s interest in dams, pen stocks, water power, riparian and littoral rights and flowage rights in the Royal River and the land and shores abutting the Royal River.

3. The easement rights granted to Grantor by Michael Wilbur by deed dated May 2, 2008 and recorded in said Registry in Book 26021, Page 313.

This conveyance is subject to and with the benefit of any rights and obligations referred to in a Notice of Assignment of Union Atlantic Electricity Lease between Borrower and Sparhawk Mill Associates, LLC dated August 7, 2012 as recorded in Book 30035, Page 198. Also excepting from this conveyance those rights released by Grantor to Michael Wilbur in deed dated May 2, 2008 and recorded in said Registry in Book 26021, Page 310.
EXHIBIT 8
The Royal River is a small coastal watershed with a drainage area of 142 square miles. The river originates in Sabbathday Lake and drops 298 feet over its 32-mile course to the head-of-tide at Yarmouth, Maine. Much of the vertical drop occurs in four cascades near the head-of-tide: these are located approximately 0.9-0.11, 0.43-0.47, 0.83-0.89, and 1.09-1.13 river miles upstream of the I-295 bridge (Figure 1).

In 1974 the Department of Marine Resources (DMR) initiated a program to restore anadromous fish populations to the Royal River, specifically alewife for commercial exploitation and American shad for a recreational fishery. Briefly, this program included constructing a fishway at the Bridge Street dam in 1974 and one at the Elm Street Dam in 1979, stocking gravid alewives into Sabbathday Lake and Runaround Pond (Table 1), and stocking adult shad above the Elm Street fishway. DMR also monitored adult returns at the Bridge Street fishway for 16 years and at the Elm Street fishway for 7 years (Table 1).

Based on DMR data I would not expect removal of the Bridge Street and Elm Street dams to result in large runs of alewife, blueback herring, American shad, Atlantic salmon, or rainbow smelt in the Royal River for the following reasons:

- From 1977-1988, alewife, white sucker, and (stocked) brown trout were commonly caught in the Bridge Street fishway trap, but no blueback herring, no anadromous Atlantic salmon, no rainbow smelt and only one American shad were ever caught.

- The cascade between the Bridge Street fishway and the Elm Street fishway appears to be a natural barrier to alewives.\(^2\) Over an eight year period a maximum of 11% of the alewives that ascended the Bridge Street fishway also ascended the Elm Street fishway (Table 1, col D). During this period brown trout and white sucker were caught at both fishways, an indication that the fishways were functioning.

- Although DMR stocked Sabbathday Lake with alewives for 15 years and Runaround Pond for 18 years a self-sustaining run of alewives did not result. Returns to Bridge Street declined from an estimated 50,000\(^3\) fish in 1981 to 6,106 fish in 1988, and in 2003 and 2004 the annual return was less than 50 individuals (Table 1). The inability to produce a self-sustaining run with continual stocking is almost certainly the result of poor juvenile emigration from Sabbathday Lake and Runaround Pond, particularly in dry years.

- From 1978-1981, DMR transported 197 adult American shad from the Narraguagus River and stocked them in the Royal River at the Route 231 crossing. DMR captured juvenile shad in a fyke net set below the Bridge Street Dam during each of the four years of adult stocking, thus confirming successful spawning. When adult American shad were expected to return to the Royal River (1982-1986), DMR captured just one in the Bridge Street fishway. If a remnant population of American shad still spawn below the Bridge Street, there is no guarantee that these fish would (or could) ascend the Bridge Street cascade, the Elm Street cascade, and the intervening cascade if the dams are removed.

- The Royal River is outside the range of the Gulf of Maine distinct population segment of Atlantic salmon. Obtaining any eggs, fry, parr, smolts, or adults for stocking in the Royal River would likely be nearly impossible. An adult Atlantic salmon might occasionally stray to the Royal River, but this would not be sufficient to initiate a run.

---

1 When the fishways were constructed the cascade between the Bridge Street dam and Elm Street dam was thought to be passable.

2 It is DMR's policy to restore fish to historical habitat; waters above this cascade may never have been used by alewife.

3 I am unable to find any explanation about how this estimate was derived.
Table 1. Total number of alewives annually ascending the Bridge Street fishway (col A) that were passed into the Bridge Street headpond (col B), and ascended the Elm Street fishway (col C). Alewives stocked into the Elm Street headpond (col E), Sabbathday Lake (col F), or Runaround Pond (col G) were obtained either from the Bridge Street fishway after being counted or from nearby watersheds.

<table>
<thead>
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<th>Year</th>
<th>(A) Number at Bridge St fishway</th>
<th>(B) Number into Bridge St headpond</th>
<th>(C) Number at Elm St fishway</th>
<th>(D) 100*(C)/(B)</th>
<th>(E) Number into Elm St headpond</th>
<th>(F) Number stocked in Sabbathday Lake</th>
<th>(G) Number stocked in Runaround Pond</th>
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<td>362</td>
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Figure 1. Bridge Street, middle, and Elm Street cascades on the Royal River.
EXHIBIT 9
July 10, 2018

To: Agency and Stakeholder Consultation List (Attached) (via e-mail and U.S. Mail)

Re: Draft Petition to Surrender Exemption for FERC Project 8417

Dear Interested Person:

On behalf of Sparhawk, LLC and in accordance with the consultation requirements of 8 C.F.R. § 4.102, attached please find a draft petition to surrender an exemption for FERC Project 8417 (the Old Sparhawk Mill Hydro). As described in the attached, Sparhawk, LLC, owns the Sparhawk Mill located on the Royal River in Yarmouth, Maine. The Mill is located downstream from a dam that is owned by the Town of Yarmouth. In 1985, FERC issued an exemption (P 8417) authorizing operation of a small hydro power facility there. The facility is not currently generating power and has not done so for more than three years. Sparhawk, LLC acquired the Mill in 2014, but it does not possess rights to the dam or other critical project facilities, nor does it seek to acquire such rights or recommence hydro operation at the Mill. Accordingly, to the extent that it has any rights in the FERC exemption, Sparhawk, LLC intends to file a petition to surrender such rights.

If you have any comments or questions on the draft petition to surrender, please let me or Allan Jagger, the principal of Sparhawk, LLC, know. If you would like an opportunity to visit the site, we would be happy to try to coordinate such a visit. Sparhawk, LLC intends to file its petition to surrender with FERC later this summer.

Sincerely,

Juliet T. Browne

JTB/prf
Attachment
cc: Allan Jagger (w/enc.)
<table>
<thead>
<tr>
<th>Agency and Stakeholder Consultation List (P 8417)</th>
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<tr>
<td><strong>Federal Energy Regulatory Commission</strong>&lt;br&gt;Division of Dam Safety and Inspections&lt;br&gt;John Spain&lt;br&gt;Regional Engineer&lt;br&gt;New York Regional Office&lt;br&gt;19 West 34th Street&lt;br&gt;Suite 400&lt;br&gt;New York, NY 10001-3006&lt;br&gt;Tel: (212) 273-5954&lt;br&gt;E-mail: <a href="mailto:john.spain@ferc.gov">john.spain@ferc.gov</a></td>
<td><strong>National Park Service</strong>&lt;br&gt;U.S. Department of the Interior&lt;br&gt;Dan Smith&lt;br&gt;Acting Director&lt;br&gt;Headquarters&lt;br&gt;1849 C Street NW&lt;br&gt;Washington, DC 20240&lt;br&gt;Tel: (202) 208-3818&lt;br&gt;E-mail: <a href="mailto:paul_smith@NPS.gov">paul_smith@NPS.gov</a></td>
</tr>
<tr>
<td><strong>Federal Energy Regulatory Commission</strong>&lt;br&gt;Div. of Hydropower Admin. &amp; Compliance&lt;br&gt;Steve Hocking&lt;br&gt;Branch Chief/Program Manager (OEP)&lt;br&gt;Office of Energy Projects&lt;br&gt;888 1st Street, N.E. – Room 7T-03&lt;br&gt;Washington, DC 20426&lt;br&gt;Tel: (202) 502-8753&lt;br&gt;E-mail: <a href="mailto:steve.hocking@ferc.gov">steve.hocking@ferc.gov</a></td>
<td><strong>U.S. Environmental Protection Agency</strong>&lt;br&gt;Ralph Abele&lt;br&gt;Chief Water Quality Unit&lt;br&gt;Region 1: New England&lt;br&gt;5 Post Office Square - Suite 100&lt;br&gt;Boston, MA 02109-3912&lt;br&gt;Tel: (617) 918-1629&lt;br&gt;E-mail: <a href="mailto:Abele.ralph@epa.gov">Abele.ralph@epa.gov</a></td>
</tr>
<tr>
<td><strong>National Oceanic and Atmospheric Administration</strong>&lt;br&gt;GARFO&lt;br&gt;Michael Pentony&lt;br&gt;Regional Administrator&lt;br&gt;55 Great Republic Drive&lt;br&gt;Gloucester, MA 01930-2298&lt;br&gt;Tel: (978) 281-9300&lt;br&gt;E-mail: <a href="mailto:michael.pentony@noaa.gov">michael.pentony@noaa.gov</a></td>
<td><strong>U.S. Fish and Wildlife Service</strong>&lt;br&gt;Paul Phifer&lt;br&gt;Assistant Regional Director&lt;br&gt;Ecological Services&lt;br&gt;Region 5 – Northeast&lt;br&gt;300 Westgate Center Drive&lt;br&gt;Hadley, MA 01305-9589&lt;br&gt;Tel: (413) 253-8300&lt;br&gt;E-mail: <a href="mailto:paul_phifer@fws.gov">paul_phifer@fws.gov</a></td>
</tr>
<tr>
<td><strong>NOAA Fisheries</strong>&lt;br&gt;Maine Field Station&lt;br&gt;Jeffrey S. Murphy&lt;br&gt;17 Godfrey Dr., Suite 1&lt;br&gt;Orono, ME 04473&lt;br&gt;Tel: (207) 866-7379&lt;br&gt;E-mail: <a href="mailto:Jeff.murphy@noaa.gov">Jeff.murphy@noaa.gov</a></td>
<td><strong>U.S. Fish and Wildlife Service</strong>&lt;br&gt;Anna Harris&lt;br&gt;Project Leader&lt;br&gt;Ecological Services&lt;br&gt;Maine Field Office&lt;br&gt;306 Hatchery Way&lt;br&gt;East Orland, ME 04431&lt;br&gt;Tel: (207) 902-1567&lt;br&gt;E-mail: <a href="mailto:Anna_Harris@fws.gov">Anna_Harris@fws.gov</a></td>
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<td><strong>National Park Service</strong>&lt;br&gt;U.S. Custom House&lt;br&gt;Gay Vietzke&lt;br&gt;Regional Director&lt;br&gt;Northeast Region&lt;br&gt;200 Chestnut Street, 5th Floor&lt;br&gt;Philadelphia, PA 19106&lt;br&gt;Tel: (215) 597-7013&lt;br&gt;E-mail: <a href="mailto:gay_vietzke@NPS.gov">gay_vietzke@NPS.gov</a></td>
<td><strong>Army Corps. of Engineers</strong>&lt;br&gt;Jay Clement&lt;br&gt;Senior Manager &amp; Team Leader&lt;br&gt;675 Western Avenue&lt;br&gt;Manchester, ME 04351&lt;br&gt;Tel: (207) 623-8367&lt;br&gt;E-mail: <a href="mailto:Jay.L.Clement@nae02.usace.army.mil">Jay.L.Clement@nae02.usace.army.mil</a></td>
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<tr>
<td>Maine Department of Agriculture, Conservation and Forestry</td>
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<td>Maine Bureau of Parks and Lands</td>
<td>Kirk F. Mohney</td>
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<td>Jim Vogel</td>
<td>Director and State Historic Preservation Officer</td>
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<tr>
<td>Senior Planner</td>
<td>55 Capitol Street</td>
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<td>22 State House Station</td>
<td>65 State House Station</td>
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<tr>
<td>Augusta, ME 04333</td>
<td>Augusta, ME 04333-0065</td>
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<tr>
<td>Tel: (207) 287-2163</td>
<td>Tel: (207) 287-3811</td>
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<tr>
<td>E-mail: <a href="mailto:jim.vogel@maine.gov">jim.vogel@maine.gov</a></td>
<td>E-mail: <a href="mailto:kirk.mohney@maine.gov">kirk.mohney@maine.gov</a></td>
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<tr>
<td>Walter E. Whitcomb</td>
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<td>Tel: (207) 624-6553</td>
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<td>Deborah Delp</td>
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<td>Chris Sockalexis</td>
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<td>Paul V. Nolan</td>
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From: Landis Hudson [mailto:landis@mainerivers.org]
Sent: Friday, July 13, 2018 9:50 AM
To: Browne, Juliet <jbrowne@verrilldana.com>
Cc: Flaherty, Peggy <pflaherty@verrilldana.com>; allan.jagger@gmail.com
Subject: Re: Consultation on Petition to Surrender FERC Exemption (P 8417)

Dear Ms. Browne,

Thank you for the letter and draft petition, we are reviewing the material.

Please do include us in plans for a site visit.

Best, Landis

Landis Hudson
Executive Director, Maine Rivers

www.mainerivers.org
Phone: 207-847-9277

Our mission is to protect, restore and enhance the ecological health of Maine’s river systems
Hello Juliet - Thank you for seeking our comments on the draft petition to surrender the exemption for the Old Sparhawk Mill Hydro Project (FERC No. 8417). We understand that the Old Sparhawk Mill Hydro Project is the first dam on the Royal River in Yarmouth, Maine. Federally listed Atlantic sturgeon and shortnose sturgeon could occur the Royal River in the vicinity of the project. The ESA requires federal agencies (in this case, the FERC) to ensure, in consultation with us, that any action authorized, funded, or carried out by the federal agency is not likely to jeopardize species listed under the ESA or destroy or adversely modify critical habitat. As project details become finalized, FERC may need to request a consultation pursuant to section 7 of the Endangered Species Act (ESA) regarding the surrender of the project exemption. If you have any questions, please contact Matt Buhyoff (Phone: 207-866-4238; email: matt.buhyoff@noaa.gov).

Thanks, Jeff.

--
Jeff Murphy
NOAA's National Marine Fisheries Service
Maine Field Station
17 Godfrey Drive
Orono, Maine 04473
PH: 207-866-7379
FAX: 207-866-7342
July 17, 2018

Ms. Juliet T. Browne
Verill Dana LLC
One Portland Square
Portland, ME 04112-0586

Project: MHPC# 0883-18 Sparhawk LLC; On the Royal River in Yarmouth; FERC 8417 Draft Petition to Surrender Exemption

Town: Yarmouth, ME

Dear Ms. Browne:

In response to your recent request, I have reviewed the information received July 12, 2018 to continue consultation on the above referenced projects in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA).

As you may know, the Royal River Manufacturing Company Complex including the dam and the mill were determined eligible for listing in the National Register of Historic Places.

Based on the information submitted, I have concluded that there will be no historic properties (architectural or archaeological) affected by this proposed undertaking, as defined by Section 106.

Please contact Megan Hopkin at (207) 287-2992 or megan.m.hopkin@maine.gov if we can be of further assistance in this matter.

Sincerely,

Kirk F. Mohney
State Historic Preservation Officer
From: Wippelhauser, Gail [mailto:Gail.Wippelhauser@maine.gov]
Sent: Wednesday, July 18, 2018 3:04 PM
To: Browne, Juliet <jbrowne@verrilldana.com>
Subject: Comments on Sparhawk

Juliet:

Please find our comments attached.

Gail Wippelhauser, Ph. D.
Marine Resources Scientist
Maine Department of Marine Resources
#172 State House Station
Augusta, ME 04333

Phone: 207-624-6349 Fax: 207-624-6501
email: gail.wippelhauser@maine.gov
July 18, 2018

Ms. Juliet T. Browne
Verrill Dana LLP
One Portland Square
Portland, ME 04112-0586

RE: FERC #8417 Old Sparhawk Mill Hydro Project

Dear Ms. Browne:

These are the comments of the Maine Department of Marine Resources (MDMR) in response to the Draft Petition to Surrender Exemption for FERC Project 8417 that we received from you on July 10, 2018. MDMR understands that Sparhawk LLC acquired the Mill in 2014, but does not possess the rights to the dam or other critical project facilities, and does not seek to acquire these rights. We understand that the facility has not generated power for more than three years, and that Sparhawk LLC does not wish to pursue power generation. We have no objections to Sparhawk LLC’s petition to surrender the exemption for this Project.

If you have any questions, please contact Gail Wippelhauser at (207) 624-6349.

Sincerely yours,

[Signature]

Patrick C. Keliher, Commissioner

cc: Sean Ledwin, MDMR
    John Perry, DIFW
    Kathy Howatt, DEP
    Antonio Bentivoglio, USFWS
    Sean McDermott, NOAA
Good Morning,

I have received and reviewed the proposed draft petition to surrender and exemption for FERC Project No. 8417 – the Old Sparhawk Mill Hydro Dam. It is understood that Sparhawk, LLC owns the Sparhawk Mill but does not possess rights to the dam. It is also understood that the Sparhawk Mill Hydro Dam does not generate power and Sparhawk, LLC does not intend to recommence hydro operation at the site, in which case Sparhawk, LLC intends to draft a petition to surrender their rights to operate the dam in any capacity.

Thank you for updating the Penobscot Nation THPO Office with this undertaking.

Have a great weekend,

Chris Sockalexis, THPO
Penobscot Nation
Cultural & Historic Preservation
12 Wabanaki Way
Indian Island, ME 04468
(207) 817-7471
Hi Juliet,

Our letter of “no objections” is attached—please let me know if you have any questions.

John

John Perry  
Environmental Review Coordinator  
Maine Department of Inland Fisheries and Wildlife  
284 State Street, 41 SHS  
Augusta, Maine 04333-0041  
Tel (207) 287-5254; Cell (207) 446-5145  
Fax (207) 287-6395  
www.mefishwildlife.com

Correspondence to and from this office is considered a public record and may be subject to a request under the Maine Freedom of Access Act. Information that you wish to keep confidential should not be included in email correspondence.
August 13, 2018

Juliet T. Browne
Verrill Dana, LLP
One Portland Square
Portland, ME 04112-0586

RE:  Old Sparhawk Mill Hydro Project No. 8417

Dear Ms. Browne,

On July 10, 2018, the Maine Department of Inland Fisheries and Wildlife (MDIFW) received the Draft Petition to Surrender Exemption for the FERC Project 8417. The Project is located on the Royal River in Yarmouth. MDIFW understands that Sparhawk, LLC acquired the Old Sparhawk Mill in 2014 but does not possess the rights to the dam or other critical project facilities, and does not seek to acquire these rights. We also understand that the facility has not generated power for more than three years, and that Sparhawk, LLC does not wish to pursue power generation.

Our Agency has no objections to Sparhawk, LLC’s petition to surrender the exemption for this Project.

Please let me know if you have any questions.

Best regards,

John Perry
Environmental Review Coordinator

Cc: Tim Peabody, Deputy Commissioner MDIFW
    Francis Brautigam, Joe Overlock—MDIFW Fisheries Division, Augusta Headquarters
    James Pellerin—MDIFW Region A
    Kathy Howatt--MDEP
    Sean Ledwin, Gail Wippelhauser--MDMR
    Antonio Bentivoglio, Steve Shepard--USFWS
    Sean McDermott--NMFS
September 10, 2018

Juliet T. Browne, Esquire
Verrill Dana LLP
One Portland Square
Portland, Maine 04112

Re: Draft Petition to Surrender Exemption for FERC Project 8417

Dear Ms. Browne,

These comments are submitted by the Sebago Chapter of Trout Unlimited (“Sebago TU”), the Conservation Law Foundation, and Maine Rivers regarding the draft surrender application for the exemption for the Old Sparhawk Mill hydro project, located on the Royal River in Yarmouth, Maine, which is proposed to be submitted to the Federal Energy Commission.

Sebago TU, an affiliate of Trout Unlimited, and Maine Rivers have many members who reside in the area and often utilize the Royal River for recreation including boating, hiking, and in particular fishing. Those members are disturbed by the impact of the project, and in particular the decline in sport fishing opportunities on this River, which because of its location near Portland could be a major recreational and ecological observation opportunity for a large population, including members of Maine Rivers and Sebago TU.

The Conservation Law Foundation (“CLF”) is a non-profit, member supported environmental organization that works to solve environmental problems threatening the people, natural Resources, and communities in Maine and throughout New England. Its mission includes the conservation and protection of the waters in and around Maine for, among other things, fishing, recreation, boating, scenic, aesthetic and scientific purposes.

1. Status of the Exemption

The draft states that the owner of the property claims it had no intention of acquiring the FERC exemption when he acquired the property in 2014. However, the FERC Order states that the “Old Sparhawk Mill Project No. 8417 . . . is exempted.” 31 FERC  P 62239 (1985). Hence, the exemption “runs” with the project and the fact that the ownership of the physical structures and associated rights subsequently changed hands does not affect the exemption for the project. While the former owner “apparently” did not notify either Mr. Jagger or FERC of the exemption, this oversight has been effectively rectified by Mr. Jagger and counsel through numerous communications with FERC staff, particularly with respect to dam inspections.¹

2. Decommissioning Law and Principles

The surrender of exemptions is governed by 18 C.F.R. 4.102 (d) which provides that an exemption can only be surrendered “upon fulfillment by the exemption holder of such with respect to the disposition of such project works and restoration of project lands as may be

¹ See, e.g., letter to John Spain, P.E., Regional Engineer, FERC, Office of Energy Projects, Division of Dam Safety and Inspections, regarding P-8417, Bridge Street/Old Sparhawk Mill, January 12, 2018.
determined by the Commission and the Federal and state fish and wildlife agencies.” In that connection, we believe that the Commission’s Policy on Decommissioning, 60 Federal Register 339 (January 4, 1985), sets forth a number of guiding principles that should apply here and that inform our comments on the Draft.

(a) In those cases where a project will no longer be licensed, “the project must be decommissioned.” In such a circumstance, the Commission must ensure that the “project is decommissioned in a manner that is consistent with the public interest.”

(b) The licensee [i.e., exemptee] must “ultimately be responsible for meeting a reasonable level of decommissioning costs if and when the project is decommissioned.”

(c) The Commission’s approach to conditions it imposes “are realistic and pragmatic. . . . the Commission looks at the costs to the licensee in complying. . . as well as the environmental benefits from imposing them. . . .” Further “meeting reasonable environmental costs is a part of today’s cost of doing business.” Id at 243.

3. Rights, Title and Interest

The ownership of the facilities is worthy of a law school exam in a first-year real property course. When the exemption was granted in 1985, the project was described as follows:

“The proposed project would consist of (1) the existing 8-foot high, 140 foot-long dam. . . ; (2) the existing 9-acre reservoir; (3) a proposed 215 feet-long, 7-foot in diameter penstock; (4) a proposed powerhouse . . . ; (5) the existing tailrace channel . . . ; (6) a proposed . . . transmission line; and (7) appurtenant facilities.”

The ownership of these facilities seems to have evolved as follows.

In 1974, all right title and interest in the Bridge Street dam in Yarmouth “and the penstocks, water power, riparian, littoral and flowage rights associated therewith “were transferred to the Town, subject to certain usage easements. Then in February 1984, the Town executed a 15 year lease (with two 10 year renewal options) in favor of the Petitioner’s predecessor of the Bridge Street Dam “and the penstocks, water power, riparian, littoral and flowage rights associated therewith.” It is not clear whether these options have been exercised.

Then in 2008, Petitioner’s predecessor sold to a Michael Wilbur a parcel of land located on the northwesterly side of Bridge Street with two very important exceptions:

“Excepting and reserving to Grantor all of Grantor’s right title and interest in the dam and flowage rights in the Royal River relating to the . . . ‘Old Sparhawk Mill’ hydroelectric facility in the Town of Yarmouth Maine; and a certain agreement dated July 19, 1983, as amended by Amendment to Agreement dated February 24, 1992, . . . relating to said dam and flowage rights in the Royal River . . . .” AND “Excepting and reserving to Grantor all of Grantor’s interest in dams, pen stocks, water power, riparian and littoral rights and flowage rights in Royal River and the land and shores abutting Royal River.”
It is noteworthy that the Grantor in this deed is the predecessor in ownership of the proposed Petitioner. That Grantor is the same corporate entity that, by quit claim deed, granted Petitioner on July 31, 2014, the following:

“All of Grantor’s right, title and interest in the dam and flowage rights in the Royal River relating to the so-called ‘Old Sparhawk Mill’...hydroelectric facility in the Town of Yarmouth, Maine...” and “All of Grantor’s interest in dams, pen stocks, water power, riparian and littoral rights in the Royal River and the land and shores abutting the Royal River.”

Given these ambiguities, it is incumbent on the Petitioner, or its counsel, to conduct a title survey and provide a title opinion so that the Commission and the interested parties can best assess appropriate conditions to be met before a surrender application can be effectuated.

4. Proposed Conditions for Approval

(a) Leased rights: The draft petition states that the petitioner has no intention of recommencing hydro power at the project site and is uncertain about the continued validity of the 2012 agreement with the Town of Yarmouth, the owner of the dam, allowing the petitioner’s predecessor to operate the dam for hydropower use, including flowage rights. The petitioner should formally renounce all rights under said lease as a condition to surrender.

(b) Penstock: currently, the project includes a steel penstock, approximately 215 feet long, seven feet in diameter, which is installed on concrete cradles. Since the exemption referred to a “proposed” penstock, the unit currently in place post-dates the grant of the exemption and given the ambiguity of the ownership, as detailed above, its removal should be a condition of surrender unless the exemptee can demonstrate to the satisfaction of the Commission that it has no right, title or interest in any portion of the penstock. In those instances where the Petitioner owns portions of the penstock, or is unable to demonstrate otherwise, environmentally sound removal should be a condition of surrender.

(c) Other Equipment: While the draft surrender document states that most of the generating equipment has been removed from the power house, any remaining equipment that could leak toxic chemicals into the waterway should be removed prior to surrender. Similarly, any toxic chemicals in the building resulting from hydroelectric operation should be removed.

(d) Tailrace Fish Barrier: We understand from visual observation that a fish barrier was installed at the tail race to prevent fish from entering the penstock. The barrier and its components have deteriorated, but still are present at the confluence of the tail race and the main channel. Removal of all remnants of this barrier should be a condition of surrender.

5. Environmental and Public Interest Considerations

The Royal River is just one of many in Maine and elsewhere that has been despoiled by dams and the consequent loss of their ecological value. This is particularly disturbing where there is no benefit from hydropower generation and a recognition that a facility is incapable of contributing to the power pool. What concerns us in particular is that this River has become a desert in an area
of Maine where restoration efforts have been focused on hydropower rather than the interests of Maine citizens.

It is precisely for that reason that the Exemption was accompanied by a Water Quality Certification issued by the State of Maine under section 401 of the Clean Water Act, see 33 U.S.C. § 1341(d), that required the holder of the exemption to operate a fishway at the Bridge Street Dam. Not only has the Petitioner failed to provide for proper maintenance and operation of that fishway but he has also failed to provide for maintenance of the minimum flow levels required by the § 401 Certification. That failure is currently the subject of a Notice of Intent to Sue filed by Conservation Law Foundation earlier this year. (Attached.) The restoration of native sea run fisheries to this section of the Royal River can not happen without at a minimum a functioning fish passage facility at the Bridge Street Dam and environmental and public interests of the community require that issue be addressed before any petition to surrender the exemption can be acted upon.

We applaud the efforts of an entrepreneur who has chosen to adapt a facility to contemporary economic realities and has profited from the conversion of a historic building to present day uses. But at the same time we will urge the Commission to ensure that the current owner be required to take into account the restoration of the asset now owned to the condition that pre-existed futile attempts to generate power. There is abundant scientific opinion that restoration of rivers is a vital element of Maine’s future. See OpEd by John Waldman, “Mainers, Why Not Fix Your Rivers?” Portland Press Herald, August 16, 2018.

6. Conclusion

We appreciate your solicitation of views from interested parties on the proposed surrender document and will be pleased to engage in any efforts to resolve this matter. Please do let us know if there are any questions that you have after review of this assessment of the draft surrender application.

In this connection, we are advised by Alan Stearns, Executive Director, Royal River Restoration Trust, P.O. Box 90, Yarmouth, Maine 04096, that he authorizes this filing on behalf of the RRCT.

Respectfully submitted,

Sebago Chapter of Trout Unlimited
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Washington, D.C. 20007

Conservation Law Foundation
/s/ Sean Mahoney
Executive Vice President
53 Exchange Street, Suite 200
Portland, Maine 04101

Maine Rivers
/s/ Landis Hudson
Executive Director
Maine Rivers
P.O. Box 782
Yarmouth, Maine 04096
Certificate of Distribution

I certify that I have submitted a copy of this comment to the Maine Department of Inland Fisheries and Wildlife (Sean.M.Ledwin@Maine.gov) and the City Manager, Town of Yarmouth, Maine (ntupper@Yarmouth.me.us).

/s/ Charles Owen Verrill, Jr
ANNEX
May 11, 2018

Allen Jagger  
5 Amerescoggin Road  
Falmouth, ME 04105

Michael Cardente  
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Portland, Maine 04101

Patricia Thompson, Chair, Town Council  
Town of Yarmouth  
200 Main Street  
Yarmouth, Maine 04096

Nathaniel J. Tupper, Town Manager  
Town of Yarmouth  
200 Main Street  
Yarmouth, Maine 04096

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

Mr. Jagger, Mr. Cardente, Ms. Thompson, and Mr. Tupper:

This letter constitutes notice pursuant to 40 C.F.R., Part 135 and 33 U.S.C. § 1365(b) of the Conservation Law Foundation’s (CLF)\(^1\) intention to file suit against Allen Jagger (“Mr. Jagger”), Michael Cardente (“Mr. Cardente”), and the Town of Yarmouth, Maine (“Yarmouth”) (collectively, “Defendants”) in United States District Court for the District of Maine seeking appropriate injunctive and declaratory relief, and other relief no earlier than 60 days from the postmark date of this notice letter. CLF intends to file suit for violations of the Federal Water Pollution Control Act (commonly referred to as the “Clean Water Act”), 33 U.S.C. §§ 1251 et

\(^1\) CLF is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of the many uses of the waters in and around Maine for, among other things, fishing, recreation, boating, scenic, aesthetic and scientific purposes. CLF’s members live along or near the Royal River and in or near the Royal River watershed, and use and enjoy the Royal River for recreational, aesthetic, and/or scientific purposes, including fishing and enjoying wildlife in and around the Royal River. The interests of CLF’s members are adversely affected by Defendants’ alleged violations of the Clean Water Act set forth herein.
seq., specified below. CLF will file suit pursuant to Section 505(a) of the Clean Water Act, id. § 1365(a).

The subject of this action is a dam located on the Royal River in Yarmouth, Maine, known as the “Bridge Street Dam.” The town of Yarmouth owns both the Bridge Street Dam and its fishway. The Bridge Street Dam is associated with the property located at 81 Bridge Street (known as the “Old Sparhawk Mill”), which Mr. Jagger co-owns, and for which Mr. Cardente is the property manager.

A hydroelectricity generation project (“Hydro Project”) has historically been contained within the basement of the Old Sparhawk Mill, powered by a penstock diverting water from the Bridge Street Dam to turn the turbines. The Hydro Project is permitted by the U.S. Federal Energy Regulatory Commission (“FERC”) pursuant to an Order Granting Exemption from Licensing of a Small Hydroelectric Project of 5 Megawatts or Less issued in 1985 (FERC Project No. P-8417-ME) (“Exemption”). The current holder of the Exemption is Mr. Jagger, and Mr. Cardente is the primary contact for FERC communications regarding the Hydro Project.

As part of the FERC licensing process, pursuant to the Clean Water Act, the Maine Department of Environmental Protection (DEP) issued a water quality certification for the Hydro Project in 1984 (“§ 401 Certification”), attached hereto as Exhibit A. Defendants are not complying with the terms of the § 401 Certification. Specifically, the fishway at the Bridge Street Dam is not operational, in violation of the § 401 Certification. Further, the Bridge Street Dam does not maintain the minimum flow levels required by the § 401 Certification. Under the Clean Water Act, the terms of the water quality certification are also conditions of the Exemption. See 33 U.S.C. § 1341(d). As holder of the Exemption and owner of the Hydro Project, Mr. Jagger has violated and continues to be in violation of the Clean Water Act. As manager of the Exemption and the Hydro Project, Mr. Cardente has violated and continues to be in violation of the Clean Water Act. As the owner and operator responsible for the maintenance of the fishway and the Bridge Street Dam which are in violation of the § 401 Certification, the town of Yarmouth, Maine has violated and continues to be in violation of the Clean Water Act.

STATUTORY BACKGROUND

The Clean Water Act protects the nation’s waters by establishing a framework for the regulation of discharges, discharges of pollutants, and quality standards for surface waters. Congress enacted the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). Congress established the “national goal” of achieving “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water[.]” Id. Thus, the Clean Water Act controls more than just the “discharge of pollutants” into the water; it also addresses “pollution” broadly defined as “the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.” Id. §§ 1362(19), 1251(a); see also S.D. Warren
Section 401(a) of the Clean Water Act requires an applicant for a federal license to first obtain a state certification of compliance with applicable water quality standards and effluent limitations. Specifically, any applicant for a federal license or permit to conduct an activity that may result in any discharge into navigable waters must provide the federal licensing or permitting agency with a certification from the state in which the discharge originates. 33 U.S.C. § 1341(a). Certifications under § 401 “shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure” that the applicant’s discharges and other activities will comply with all applicable state water quality standards and effluent limitations. Id. § 1341(d). Each of the requirements of the certification under § 401 “shall become a condition on any Federal license or permit subject to the provisions of [section 401].” Id.

Violators of the Clean Water Act are subject to enforcement actions initiated by citizens in addition to enforcement actions brought by EPA and states. Id. §§ 1319, 1365(a). Section 505(a) of the Clean Water Act authorizes citizen suits “against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this chapter.” Id. § 1365(a). Section 505(f) defines “effluent standard or limitation under this chapter” to include, *inter alia*, “certification under section 1341 of [the Clean Water Act].” Id. § 1365(f)(5). The Clean Water Act defines “person” to include, *inter alia*, an individual, corporation, partnership, association, or municipality. Id. § 1362(5). Citizens are required to provide sixty days’ notice of any alleged violations prior to commencing suit. Id. § 1365(b); 40 C.F.R., Part 135.

Under the Federal Power Act, 16 U.S.C. §§ 791-828(c), FERC issues licenses for the construction, operation and maintenance of dams for the development of power from streams and other bodies of water over which FERC has jurisdiction. 16 U.S.C. § 797(e). In certain circumstances, FERC is authorized to provide qualifying dams with exemptions from the licensing requirements instead. See, e.g., id. §§ 823a(a) & (b), 2705. Such dams are not wholly exempted from regulation, however. While dams may be exempted from application of Part I of the Federal Power Act, they are still subject to mandatory terms and conditions set by federal and state fish and wildlife agencies and by FERC.

Releases from hydroelectric dams have regularly been interpreted to constitute “discharges” of water under the Clean Water Act. Thus, FERC-jurisdictional dams releasing into waters of the United States are subject to the Clean Water Act § 401 certification provisions. The terms of any applicable § 401 certification become conditions of the FERC license or exemption by operation of law. 33 U.S.C. § 1341(d).

**FACTUAL BACKGROUND**

The Bridge Street Dam is located on the Royal River within the town of Yarmouth, Maine. The Royal River’s headwaters are in Sabbathday Lake in New Gloucester, Maine, and the river...
travels 32 miles to reach the head-of-tide in Yarmouth, over the course of which it drops nearly 300 feet. The Royal River watershed encompasses approximately 140 square miles.

Historically, the Royal River provided spawning habitat for Atlantic salmon, shad, and river herring. Damming of the Royal River began in the second half of the seventeenth century, and by the early 1800s, there were 14 mills located along the Royal River in the town of Yarmouth alone. In 1958, more than ten fish barriers were identified within the Royal River watershed.

Beginning in the 1970s and through the early 1990s, the Maine Department of Marine Resources (“DMR”) engaged in fish restoration efforts within the Royal River. Primary emphasis was placed on restoration of alewife and American shad runs. The stocking and monitoring programs showed some promise but ultimately proved to be of limited success. For instance, although transplanted adult American shad successfully reproduced throughout the Royal River system as evidenced by out-migrating juvenile fish in the fall of 1978, the Bridge Stream Dam presented a barrier to adult fish attempting to return to their spawning waters upriver in the spring. Records show that only one adult shad was captured in the Bridge Street Dam fishway trap traveling upstream in 1981. Meanwhile, stocking efforts with respect to alewife were variable -- records indicate that alewife runs initially increased as a result of the stocking efforts to more than 50,000 ascending adults in 1981, but dropped by about half between 1982 and 1983, and significantly decreased to less than 10,000 by 1988. No blueback herring were ever recorded passing through the Bridge Street fishway. DMR has not recently engaged in counting fish returns or in stocking these species in the Royal River.

Today, the Bridge Street Dam is one of only two remaining dams on the main stem of the Royal River in Yarmouth. Constructed in 1894, the Bridge Street Dam is located approximately 2.2 miles upriver from the mouth of the river at Casco Bay and roughly 200 to 250 feet upstream from the Bridge Street bridge. It is a run-of-river type structure, spanning the full width of the Royal River and measuring approximately 275 feet in length. It is constructed of masonry and reinforced concrete and is 10 to 12 feet in structural height. The Dam’s spillway is located at the center of the Dam and is approximately 75 feet long.

The town of Yarmouth has owned the Bridge Street Dam since 1973. In 1974, as part of DMR’s fish restoration efforts, DMR contracted with the town of Yarmouth for construction of a Denil-type fishway on the Bridge Street Dam. DMR maintained a lease to operate and manage the fishway until 1999, when the terms of the 25-year lease expired and were not renewed. The fishway is located on the west side of the Bridge Street Dam. It has a vertical rise of approximately twelve to thirteen feet and is three feet wide. There is a fish screen intended to prevent fish and aquatic life from entering the intake area. Water flow into the fishway is controlled by a vertical lift gate. The gate was severely damaged in 2010, and on information and belief, is not currently operable. The fishway does not appear to be actively managed or maintained, or to have been actively managed or maintained since the expiration of DMR’s lease nearly twenty years ago.
The town of Yarmouth also owns the right-of-way and flowage rights associated with the Bridge Street Dam. In the 1980s, Yarmouth leased flowage rights to the owners/managers of the Old Sparhawk Mill to enable generation of electricity in the lower level of the building. The site was rehabbed with new turbine-generators, a new penstock to divert water from the dam and to the Hydro Project, and other repairs. At the time of development of the Hydro Project, Thomas L. Yale and P. Andre LeMaistre filed an application to FERC seeking an exemption. On May 24, 1985, FERC issued the Exemption, subject to certain conditions. The Exemption was subsequently transferred to Mr. Allen Jagger. Mr. Jagger is the current holder of the Exemption and is the co-owner of the Old Sparhawk Mill and of the Hydro Project. Mr. Cardente, property manager of the Old Sparhawk Mill, is the primary contact for FERC regarding the Exemption and the Hydro Project.

Yarmouth no longer maintains a lease agreement with the owners or managers of the Old Sparhawk Mill regarding rights associated with the Bridge Street Dam. Although the penstock is still present, it is not clear whether the Old Sparhawk Mill still contains generating equipment, and if so, to what extent the Hydro Project remains operational.

STANDARDS OR LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

Section 401 of the Clean Water Act required the Hydro Project to receive a water quality certification from DEP ensuring that the Hydro Project would comply with Maine’s water quality standards, effluent limitations and other limitations before the Hydro Project could receive its FERC Exemption. 33 U.S.C. § 1341. DEP issued the § 401 Certification on November 28, 1984. The § 401 Certification sets forth ten mandatory conditions necessary to ensure compliance with Maine water quality standards. Each term and condition of the § 401 Certification is a condition of the Exemption by operation of law. Id. § 1341(d).

The § 401 Certification acknowledges that the Hydro Project “could result in significant harm to fish and wildlife resources unless a) water levels and flows are adequate to maintain the aquatic environment, b) adequate upstream and downstream fish passage facilities are provided, and c) adequate measures are taken to control erosion and sedimentation during and following project construction.” To ensure that the Hydro Project did not result in significant harm to fish resources, DEP approved the application for the Hydro Project subject to the following conditions, inter alia:

Except as irreconcilably limited by order of state, local or federal authorities, and commencing with project construction, an instantaneous minimum flow of 50 cfs, or a flow equal to inflow when such inflow is less than 50 cfs, shall be maintained from the dam at all times, except that for the periods from May 1 to July 15 and September 1 to November 30 annually, an instantaneous minimum flow of 70 cfs,
or a flow equal to inflow when such inflow is less than 70 cfs, shall be maintained from the dam. First priority to a flow of 13 cfs shall be provided to the fishway.

Fish passage facilities for screening downstream migrating fish from the intake structure and for excluding upstream migrating fish from the tailrace channel shall be constructed and shall be operational with the commencement of project operation.

Defendants are in violation of the Clean Water Act because the fishway associated with the Bridge Street Dam is not “operational,” as required by the § 401 Certification. Defendants have also violated, and continue to violate, the minimum flow requirements set forth in the § 401 Certification, in violation of the Clean Water Act.

**ACTIVITY ALLEGED TO CONSTITUTE VIOLATIONS**

Defendants have repeatedly violated and are reasonably likely to continue to violate the § 401 Certification and the Clean Water Act by failing to maintain an operational fishway associated with the Bridge Street Dam. The fishway is not “operational” as required by the § 401 Certification and the Exemption due to Defendants’ failure to maintain and actively manage the fishway.

The Bridge Street Dam fishway requires regular maintenance and management to ensure effective performance. Flow levels must be managed by manual operation of control gates that control the release of water through the fishway. Debris like rocks, branches and accumulated trash must be removed. The Denil baffles in the fishpass require regular upkeep.

Defendants are failing to actively manage, operate or maintain the fishway. Inadequate operation as well as the need for maintenance have been documented since at least 2008, and have rendered the fishpass entirely inoperable during some migratory seasons. It is not presently known whether the headgate, which was damaged by flooding in 2010, is now fully operational. Nor is it known whether reported broken and missing boards in the fishway have been fixed. The current condition of the fishway does not facilitate effective fish passage. As a result of Defendants’ failure to manage or maintain the fishway, it is not operational as required by the § 401 Certification and the Exemption.

Further, Defendants have repeatedly violated and are reasonably likely to continue to violate the § 401 Certification and the Exemption by failing to maintain an instantaneous minimum flow of 50 cfs, or a flow equal to inflow when such inflow is less than 50 cfs, at all times, and by failing to maintain an instantaneous minimum flow of 70 cfs for the periods from May 1 to July 15 and September 1 to November 30, with first priority to providing a flow of 13 cfs to the fishway, in violation of the Clean Water Act.
It is not clear whether anyone is currently managing flow levels over the Bridge Street Dam. Yarmouth no longer maintains a lease with the owners or managers of the Old Sparhawk Mill regarding flowage rights associated with the Bridge Street Dam, yet Yarmouth does not appear to have assumed management responsibilities. It is critical that the flow levels are actively managed to ensure compliance with the § 401 Certification. The Bridge Street Dam substantially impacts the hydrology of the Royal River downstream when the penstock diverts water from the spillway, impacting the velocity, quantity, and location of flow below the Bridge Street Dam.

The flow into the fishway itself is also critical to successful passage of fish. The flow into the fishway must be managed by a manually-operated lift gate that was rendered inoperable due to flooding in 2010. The current status of the lift gate is not known; however, it does not appear that any of Defendants have been regularly operating it to ensure proper flow levels are maintained. Flows that are too high can result in impassable conditions, while flows that are too low can also prevent effective fish passage.

Defendants have violated the minimum flow levels on numerous occasions. These violations have occurred both before and after the installation of automated flow management equipment in 2012. Unless Defendants take action to actively manage flow levels, there is a continuing likelihood of recurrence of these violations, intermittently or sporadically.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Mr. Jagger and Mr. Cardente are persons, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. By operation of law, the terms and conditions of the § 401 Certification are conditions of the FERC Exemption. Mr. Jagger holds the Exemption and owns the Hydro Project. Mr. Cardente is the primary contact regarding the Exemption and on information and belief, manages the Exemption and the Hydro Project. Mr. Jagger and Mr. Cardente are therefore responsible for ensuring compliance with the Exemption and the § 401 Certification, which includes the requirements for operational fish passage and maintenance of minimum flow levels. Mr. Jagger and Mr. Cardente are responsible for the violations of the Clean Water Act alleged herein.

The town of Yarmouth, Maine is a person, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. The town of Yarmouth owns the Bridge Street Dam, the associated water and flow rights, and the associated fishway. The § 401 Certification requires the fishway to be operational. Yarmouth bears responsibility for ensuring that the fishway it owns and controls is actively managed and maintained in order to be operational. Yarmouth also bears responsibility for ensuring that the Bridge Street Dam, which it owns and controls, complies with minimum flow requirements. Yarmouth is responsible for the violations of the Clean Water Act alleged herein.
LOCATION OF THE ALLEGED VIOLATIONS

The violations alleged herein have occurred and continue to occur at the Bridge Street Dam and fishway on the Royal River associated with the Hydro Project located at the Old Sparhawk Mill, 81 Bridge Street, Yarmouth, Maine, 04096.

DATES OF VIOLATIONS

As outlined above, Defendants have repeatedly failed to comply with the terms of the § 401 Certification since at least 2008. Each instance of the Bridge Street Dam or fishway failing to comply with the terms and conditions of the § 401 Certification is a separate and distinct violation of Section 401 of the CWA, 33 U.S.C. § 1341.

These violations are ongoing and continuous, and barring a change, these violations will continue indefinitely.

RELIEF REQUESTED

Defendants are liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. CLF will seek declaratory and injunctive relief to prevent further violations of the Clean Water Act and such other relief as permitted by law. CLF will seek an order from the Court requiring Defendants to correct all identified violations and to demonstrate full compliance. Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

CONCLUSION

As detailed above, Defendants have repeatedly violated the express conditions of the § 401 Certification and are reasonably likely to continue to do so. If Defendants do not take remedial action to halt the serious violations of the § 401 Certification described herein, CLF anticipates filing suit 60 days from the date of this notice in the U.S. District Court for the District of Maine, requesting declarative and injunctive relief and the award of costs. During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. To pursue such discussions, please contact Sean Mahoney, Esq. and Emily K. Green, Esq. at the contact information set forth below within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. CLF does not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.
Sincerely,

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