

171 FERC ¶ 62,062

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Sparhawk, LLC

Project No. 8417-004

ORDER APPROVING SURRENDER OF EXEMPTION

(Issued April 23, 2020)

1. On November 6, 2018, Sparhawk, LLC (Sparhawk), exemptee for the 270 kilowatt (kW) Old Sparhawk Mill Hydroelectric Project No. 8417, filed an application to surrender its exemption from licensing.¹ The project is located on the Royal River in the Town of Yarmouth in Cumberland County, Maine. The project does not occupy federal lands.

Background

2. In 1985, an exemption from licensing was issued to Thomas Yale and P. Andre LeMaistre for the Old Sparhawk Mill Project. The dam is owned by the Town of Yarmouth, Maine, and the flowage rights and rights to operate the project were leased to Mr. Yale and Mr. LeMaistre. The fishway at the right abutment was installed and is maintained by the Maine Department of Marine Resources (Maine DMR).

3. In 2014, Sparhawk purchased Old Sparhawk Mill (mill), which included the powerhouse for the Old Sparhawk Mill Project. Sparhawk stopped operating the project shortly after it acquired the mill. Sparhawk states that it was unaware that there was an exemption associated with its acquisition. Sparhawk states that it has repurposed the mill and it is currently occupied by several small businesses.

Project Description and Project Operations

4. The Bridge Street Dam is a 224-foot-long structure of large, loose laid granite blocks capped and faced with concrete. The dam has a maximum height of 8 feet. It has a 9-acre-foot impoundment. The central feature of the dam is an approximately 140-foot-long uncontrolled spillway flanked by a non-overflow section and a state-owned fish passage facility at the right abutment. The penstock intake structure and 7-foot-diameter

¹ *Thomas Yale and P. Andre LeMaistre*, 31 FERC ¶ 62,239 (1985).

above-ground steel penstock are along the left bank. There are 6-foot-high by 3-foot-wide trash sluices located at the left and right ends of the spillway that are opened as needed for a continuous year-round minimum flow release and can be closed by stop logs. There are trashracks to the forebay of the penstock intake as well as to the penstock intake structure. Since the project ceased operation more than four years ago, all flow passes over the uncontrolled spillway.

5. The powerhouse is located on the lowest level of the Old Sparhawk Mill building about 215 feet downstream of the dam. The 215-foot-long, 7-foot-diameter penstock trifurcates once it enters the powerhouse. The three turbine/generator units in the powerhouse with a total installed capacity of 270 kW were removed in 2018 and the project has been disconnected completely from the power grid. There is an 18-foot-wide, 80-foot-long tailrace channel and a buried transmission line also associated with the exemption.

Proposed Action

6. Sparhawk proposes to surrender the exemption from licensing, stating it does not have rights from the dam owner to operate the project,² there are no operable turbines on site, and flow through the penstock has been reduced to leakage. Sparhawk further states that it will close the wooden head gate for the penstock and install caps on the downstream ends of the penstock trifurcation.

No-Action Alternative

7. Under a no-action alternative, the Old Sparhawk Mill Project would continue to hold an exemption from licensing. However, since the generating equipment has been removed and the project can no longer operate, this alternative is not a viable action.

Pre-filing Consultation

8. Sparhawk sent a draft surrender application to appropriate state and federal agencies and tribes for review and comment on July 10, 2018. In letters dated July 18, 2018 and August 13, 2018, respectively, the Maine DMR and the Maine Department of Inland Fisheries and Wildlife (Maine DIFW) stated they had no objections to the proposed surrender. Neither agency recommended any conditions.

² In 2012, the Town of Yarmouth executed, with the prior exemptee, an annual lease agreement regarding flowage and other rights necessary to operate the project. Sparhawk states that there is no current lease agreement between the Town and Sparhawk, LLC.

9. In an email dated July 13, 2018, the National Oceanic and Atmospheric Administration (NOAA) stated that Old Sparhawk Mill is the first dam on the Royal River in Yarmouth, Maine and that federally listed Atlantic sturgeon and shortnose sturgeon could occur in the vicinity of the project. NOAA stated that the Commission may need to consult with them if this action could destroy or adversely modify critical habitat.

10. In a letter dated July 17, 2018, the Maine Historic Preservation Commission, State Historic Preservation Officer (SHPO) noted that the Royal River Manufacturing Company Complex, including the dam and the mill, were eligible for listing in the National Register of Historic Places, but that there would be no historic properties (architectural or archeological) affected by the proposed undertaking. In an email to the licensee dated July 26, 2018, the Penobscot Nation Office of Cultural and Historic Preservation stated it did not have any concerns with the proposed action.

11. On September 10, 2018, the Sebago Chapter of Trout Unlimited, Maine Rivers, and Conservation Law Foundation (Trout Unlimited) provided the exemptee with comments on its draft application, which it refiled in its response to the public notice discussed below. Sparhawk responded to these comments in its final application filed with the Commission, also discussed below.

Public Notice

12. On November 27, 2018, the Commission issued a public notice soliciting comments, motions to intervene, and protests on the surrender application, setting, as extended, March 26, 2019 as the deadline. The U.S. Department of the Interior and Maine DIFW filed timely notices of intervention on December 17, 2018 and December 18, 2018, respectfully. On December 20, 2018, Trout Unlimited filed a motion to intervene and comments.

13. In a letter filed December 20, 2018, the Town of Yarmouth states that so long as no obligations, responsibilities, or liabilities of the exemption holder are transferred or otherwise devolved to the Town of Yarmouth by virtue of the Town's ownership interest in the dam, the Town was in support of the surrender. In its December 20, 2018 filing, Trout Unlimited requests that the surrender order require that Sparhawk: (1) renounce all rights to the Town of Yarmouth to operate the dam for hydropower use, including flowage rights; (2) remove the steel penstock; (3) remove any remaining equipment that could leak hazardous or toxic chemicals into the waterway; (4) remove the tailrace fish barrier; and (5) repair the intake trash rack. In addition, Trout Unlimited expressed concern that Sparhawk had not complied with the state's section 401 Water Quality Certificate, issued on November 28, 1984, which required the exemptee to maintain and operate the existing fishway, as well as provide minimum flows.

14. In its surrender application, Sparhawk states it does not believe it has any rights from the Town of Yarmouth relating to the project but has no objection to surrendering any rights the Commission may believe exist. Sparhawk states that the penstock does not create any environmental or public safety impacts, and that removing the penstock would create more adverse environmental impacts than leaving it in place. It states that all equipment and potential hazardous materials have already been removed from the site. Last, Sparhawk states that the tailrace fish barrier and intake trash rack are part of the dam that they do not own and do not have any rights relating to the dam, and fish passage is not impacted by the mill.

Environmental Review

15. The project is located on the Royal River in the Town of Yarmouth, Maine. The Royal River supports a number of warm water and cold water fish species including brook trout, brown trout, smallmouth bass, eel, alewives, and American shad. Federally listed Atlantic sturgeon and shortnose sturgeon could occur in the vicinity of the project.

16. In its comments on the draft application for surrender, NOAA stated that the Commission may need to consult with them if this action could destroy or adversely modify critical habitat. Because the surrender would not result in any changes to the existing environment, ground disturbing activities, or changes to current flows, the proposed action would have no effect on the federally listed Atlantic sturgeon or the shortnose sturgeon. Therefore, no consultation is required.

17. The project area receives substantial canoeing, fishing, and other passive recreational use. There is a municipal day-use park along the western shore of the impoundment that is not a project facility.

18. The dam and the mill are eligible for listing on the National Register of Historic Places. Surrender of the project will remove these features from federal jurisdiction under the National Historic Preservation Act; however, by its July 17, 2018 letter Maine SHPO determined that there would be no historic properties affected by the proposed surrender.

19. There are no ground disturbing activities resulting from the proposed action or changes in flows. Any equipment that could leak into project waters has already been removed.

Dam Safety

20. The downstream hazard potential classification is low based on the dam's short height and small impoundment. The dam has a maximum height of 8 feet but most of the dam is shorter. There are two major hydraulic constrictions upstream of the dam (an

active railroad bridge and the Route 1 State Highway bridge) which would limit outflows if a breach occurred during a large flood. A review of aerial photos revealed that the only potentially impacted structures are the former operator's residence and the mill building that housed the power plant, which are just downstream near the left bank. The former power plant may get flooded, but the occupied floors above it are expected to be at a high enough elevation to avoid flooding. The sill of the operator's residence appears to be about the same elevation as the dam's crest. Once the exemption is surrendered, the Maine Emergency Management Agency would assume the responsibility for the safety of the Old Sparhawk Dam.

Discussion

21. In regard to Trout Unlimited's concern that Sparhawk had not complied with the state's section 401 Water Quality Certificate, the Town of Yarmouth has an agreement with the Maine DMR granting it the exclusive right to build, operate, and maintain the fish ladder at the dam. Additionally, all flow is being passed over the dam.
22. The Commission does not require its exemptees to renounce all rights to a surrendered project. Sparhawk's application to surrender its exemption is a proposal to no longer operate the project for hydropower use. Once the surrender is granted and effective, Sparhawk will no longer have authorization from the Commission and will no longer be able to operate a hydroelectric project at the site.
23. The Commission's Division of Dam Safety and Inspections, New York Regional Office (D2SI-NYRO), inspected the project on July 20, 2018, while the penstock was free draining due to removal of the turbine/generator units. D2SI-NYRO determined that the only defects noted in the penstock were minor areas of leakage. Sparhawk stated during the 2018 inspection that it would close the head gate to the penstock so that a significant amount of water does not enter. Sparhawk would also install caps on the downstream ends of the penstock trifurcation with a pressure relief valve and add a small pressure relief gate to one of the caps to allow drainage of any accumulated water in the penstock. Because any failure of the penstock would result in releases directly to the river and would be contained within the river channel, there likely would not be significant impact to the masonry wall that reinforces the left abutment in the event of a failure. The D2SI-NYRO finds that it would be acceptable to abandon the penstock in place as it does not pose a dam safety or public safety risk. Removing the 215-foot-long by 7-foot-diameter penstock would result in more environmental disturbance than leaving it in place as proposed. So we are not recommending that the penstock be removed.
24. Regarding Trout Unlimited's request that any remaining equipment that could leak hazardous or toxic chemicals into the waterway be removed, D2SI-NYRO noted that there were no noticeable hazardous materials or containers visible during the 2018 inspection and the application for surrender states that there are no toxic chemicals or

batteries associated with hydroelectric operation present at the site. Accordingly, D2SI-NYRO has determined that Trout Unlimited's proposed condition is unnecessary.

25. According to the exhibit drawings included in the original exemption application filed December 3, 1984, the tailrace fish barrier originally consisted of a stacked masonry wall with steel racks to prevent fish from entering the area immediately downstream of the penstocks. The steel racks were not in place during the 2018 inspection³ and the tailrace fish barrier currently only consists of stacked masonry walls. Abandoning the remaining tailrace fish barrier in place would not pose a dam safety or public safety risk nor cause environmental disturbance. Further, as noted above, Maine DMR has the exclusive right to build, operate and maintain a fish ladder at the dam. The Maine DMR did not object to the proposed surrender of exemption and did not request any conditions be included as part of the surrender.

26. The D2SI-NYRO noted that the primary trashracks that are in disrepair are located approximately 10 to 15 feet away from the penstock intake structure. There are secondary trashracks at the entrance to the penstock that are in satisfactory condition. The primary trashracks have lost a panel and a second panel is severely damaged. The D2SI-NYRO considers it acceptable to abandon the trashracks in place because they do not pose a dam safety or public safety risk.

Conclusion

27. Sparhawk has removed the generating units and wishes to surrender its exemption from licensing. The project is not generating electricity and the proposed action would not result in any ground disturbing activities or changes to the existing environment. No state or federal agencies have recommended any conditions to the surrender order.

28. This order makes the surrender contingent upon Sparhawk providing documentation to the Commission's D2SI- New York Regional Engineer that it has closed the wooden penstock head gate. The surrender will not be effective until the D2SI - New York Regional Engineer has issued a letter finding that the conditions of this order have been satisfied. With these conditions, Sparhawk's surrender application should be approved.

The Director orders:

(A) Sparhawk, LLC's application to surrender its exemption from licensing filed November 6, 2018, for the Old Sparhawk Mill Project No. 8417, as modified in paragraphs (B), (C), and (D) below, is approved.

³ Nor were they in place in an earlier 2015 inspection.

(B) Sparhawk, LLC must ensure the wooden penstock head gate is closed within 90 days from the date of this order.

(C) Within 30 days of completing the decommissioning activity described in ordering paragraph (B), Sparhawk, LLC must file with the Commission a final report, with photographs, that documents that the project facilities have been decommissioned in accordance with this order. Sparhawk, LLC must submit two copies of the report to the Commission's Division of Dam Safety and Inspections - New York Regional Engineer and one copy to the Secretary of the Commission, in Washington, DC.

(D) The surrender of the exemption for the Old Sparhawk Mill Project shall not be effective until the Commission's Division of Dam Safety and Inspections - New York Regional Engineer has issued a letter stating that the project facilities have been decommissioned in accordance with this surrender order.

(E) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2018), and the Commission's regulations at 18 C.F.R. § 385.713 (2019). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

CarLisa Linton
Director
Division of Hydropower Administration
and Compliance

Document Content(s)

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