



STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PAUL R. LEPAGE
GOVERNOR

PATRICK C. KELIHER
COMMISSIONER

January 6, 2016

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Saccarappa Project (FERC No. 2897)
Application for License Surrender

Dear Secretary Bose:

The Maine Department of Marine Resources (“MDMR”) is writing to provide initial comments and requests for additional information for the Application for License Surrender (“Application”) for the Saccarappa Project (FERC NO. 2897) that was submitted by S.D. Warren, d/b/a Sappi North American, (“Warren”) on December 2, 2015. MDMR is a State of Maine agency with responsibility for the conservation and development of the state’s marine and estuarine resources and was a signatory to a March 20, 2014, agreement that resulted in a year-long evaluation of fish passage design alternatives for the Saccarappa Project. We were unable to reach consensus with Warren on a conceptual design that we believe will provide safe, timely, and effective fish passage at this site, which has been significantly altered in the last 150 years from its natural state. MDMR believes the Application is missing important information that is needed for the Commission’s environmental analysis, as described more fully below. In addition, Warren has proposed an aggressive regulatory and construction schedule in order to have fish passage operational by May 1, 2017, which we believe does not allow sufficient time to obtain necessary additional information, for interested parties to evaluate the Application and provide comments, and for the Commission to complete its review and analysis. In order to provide for full and reasonable review of the Application, and to accommodate any concern that Warren may have regarding compliance with current deadlines, MDMR would not object to the Commission granting Warren a one-year extension of time, to May 2018, for fish passage to be operational at the Saccarappa site.

MDMR requests that the following topics and issues be included in any additional information requests issued to Warren by the Commission. We also request that until all requested information listed below has been submitted by Warren and been determined by the Commission to be responsive and complete, the Application should not be found by the Commission to be ready for environmental analysis.

1. Missing post-surrender operations and maintenance plan for the proposed fishways

MDMR remains very concerned about Warren’s post-surrender responsibility for fish passage at the Saccarappa site. MDMR cannot support any actions related to the surrender of the Saccarappa Project that fail to make adequate provision for appropriate and ongoing operation, maintenance, and evaluation of the proposed fishways and that may result in a fiscal burden to the State of Maine. As the Application makes clear, the Saccarappa site has been significantly altered from its natural state, and simply decommissioning the project and removing the dams will not result in safe, timely, and effective fish

passage. Warren's proposed design includes two Denil fishways and a reconstructed passage channel containing a significant amount of fill, all of which will require ongoing operation and maintenance. Currently, the Application contains no operations and maintenance plan describing the operating schedule, the fish-counting facility and supporting structures, the fish counting process, coordination with resource agencies, inspection and repair of the fishways, or commitment of funds to accomplish and continue these operations after the license is surrendered.

2. Missing information on development of the new flow duration curve (5.2.1.1)

A new flow regime was created for the Eel Weir Project when it was relicensed in 2015. As a result, future flows at the downstream Saccarappa Project will change, and will affect the operating range of the fishways proposed for the Saccarappa Project. Early in the consultation process, the U.S. Fish and Wildlife Service identified an operating range of 225–2,350 cubic feet per second (cfs), which are the 95 and 5 percent flow exceedance probabilities, respectively. In the Application, Warren states that the changes at Eel Weir will change the 95 and 5 percent exceedances to 300 cfs and 1,500 cfs, respectively. The flow operating range directly correlates to the flow velocities at the site and to the future effectiveness of the fishways. Therefore, it is critical that this future flow duration curve be verifiable.

In our November 20, 2015 letter, we requested that Warren provide a detailed description of how the new flow duration curve was developed and provide calculations for review. Warren has not provided this information in the Application, and on page 535 states "... it is not possible to provide a calculated FDC because the new flow regime for release of water from the Eel Weir Project has not yet been fully implemented." The Application should explain in detail how the revised flow duration curve was developed.

3. Missing information on the effectiveness of the Western Channel Design

According to Section 4.1 of the Application, Warren selected the Western Channel design for four stated reasons:

1. The predicted performance of the Denil fishway in the Western Channel Design is significantly better than the rock-ramp fishway in the Two Channel Design;
2. The extensive bedrock excavation in the eastern channel proposed in the Two Channel Design will lower the water levels upstream of the site lower than pre-development historic levels and more than is necessary in order to provide fish passage at the site. The potential impacts and unintended consequences of lowering water level below that which has ever existed, could be substantial;
3. The Two Channel Design proposes extensive modifications in the eastern channel to facilitate 100% fish passage in both the western and eastern channels. Fish passage in the eastern channel is not necessary to provide safe, timely, and effective passage of the Saccarappa Falls; and
4. The scientific data support the Western Channel Design. Fish exiting the Denil fishway will naturally continue upstream into the western channel, thereby leaving the eastern channel available for enhancement of recreational opportunities. The City of Westbrook and the public have expressed their preference for leaving the eastern channel available for the future modifications to enhance recreational opportunities.

Only the first statement is supported by data, specifically energetics and performance modeling that was produced by the USFWS and MDMR in order to compare designs. Regarding the second statement, the potential consequences of bedrock excavation on the east channel have not been evaluated, and may not

be substantial. Warren's third point, that fish passage in the eastern channel is not necessary to provide safe, timely, and effective passage of the Saccarappa Falls is not substantiated by data, specifically energetics and performance modeling that was produced by the USFWS and MDMR. Finally, Warren has produced no data to support the notion that fish exiting the Denil fishway will continue up the western channel.

4. Missing information on the design of the fishways being proposed

Appendix G of the Application contains 11 pages of conceptual (30%) drawings of Warren's proposed design for fish passage. MDMR and the U.S. Fish and Wildlife Service both requested that the Application include a schedule when the 60% and 90% drawing for the Western Channel fish passage would be available for agency review. Because of our concerns about the design, we believe it is critical for the agencies to review more complete designs. For instance, at this time we do not know whether the West Channel design will include a weir/core wall to stabilize the large amount of fill. On PDF page 537 of the Application, Warren indicated it has "no plans to submit intermediate and/or final design drawings for review by state and federal resource agencies because such review is not necessary and there is not enough time in the schedule to allow for such agency review. If time is allocated for review of intermediate or final design drawings, the planned May 1, 2017 operational date for fish passage will need to be modified." As we stated at the beginning of this letter we do not object to the Commission granting a one-year extension of time, to May 2018, for fish passage to be operational at the Saccarappa site.

5. Missing information on effectiveness testing and post-construction adjustments

In our written comments to Warren on November 20, 2015, we noted that the draft surrender application was silent on how and when the effectiveness of Warren's proposed Western Channel Design at the Saccarappa Project would be assessed, and what modifications Warren would commit to making if the fish passage does not work. On PDF page 537 of the Application, Warren stated that it is not proposing effectiveness testing because it is "...confident that the Western Channel Design will provide safe, timely, and effective passage, and it will be significantly better than the extremely limited passage that existed prior to development of the Saccarappa site."

MDMR firmly believes the Application should include a plan for effectiveness testing and post-construction adjustments to the fishways prior to Warren seeking final surrender approval from FERC and no further oversight from Maine DEP. Assessment will be particularly important, because MDMR is not certain that the West Channel Design will provide safe, timely and effective passage, both for fish that enter the Western Channel and for fish that MDMR believes will enter the Eastern Channel. One assumption of Warren's proposed design is that fish exiting the Denil fishway will continue up the west channel, and all fish will use the Western Channel.

6. Missing information on the fish counting facility and counting procedures at Saccarappa

The only discussion of fish counting at Saccarappa is contained in Section 4.2.5.5 of the Application. As Warren states in that section, the ability to count fish at the Saccarappa Falls site is important because the licenses for Mallison Falls and Little Falls, the next two hydroelectric stations upstream from Saccarappa, include triggers for fish passage that are tied to counts of specific fish species at Saccarappa Falls. Given the importance of accurate counts for continued restoration of anadromous fishes to the Presumpscot River, MDMR believes that the Application should include a schedule for review of the 60% and 90% design drawings (as requested in paragraph 4) which would include details of the counting facility as well as a plan for counting and identifying fish at Saccarappa Falls.

7. Missing information on historical ability of fish to pass Saccarappa Falls

Section 5.7.5 of the Application summarizes the history of fish passage at Saccarappa Falls, location of the existing Saccarappa Project. On PDF page 534, Warren notes that this section of the application was to address the Additional Information Request (AIR) from FERC dated April 9, 2014. The following undocumented statements appear in this section:

Available data, however, support the conclusion that passage over the lower falls and the falls on the east side of the island for river herring and American shad has been historically challenging, even before any man-made water diversion structures or dams were built at the site.

Fisheries biologists indicate that the lower falls at Saccarappa are, and therefore were, not passable by river herring and Shad with the possible exception of some exceptional fish under certain flow conditions.

The available data indicate that the western side of the island posed a more onerous pathway over the upper falls than the eastern falls. Therefore, any river herring and Shad that did successfully navigate the lower falls would then have to pass the eastern upper falls. The prevailing view is the upper falls are passable under low to moderate flow conditions.

Warren has not provided any citations or documentation to support these statements contrary to the Commission's AIR instruction to "Support your discussion and conclusions with documentation and data specific to the project area." We further note that during initial consultation in 2012, Warren was confident that passage on the east channel was entirely possible.

If you have any questions, please contact Gail Wippelhauser at 207-624-6349 or by email at gail.wippelhauser@maine.gov.

Sincerely,



Patrick C. Keliher, Commissioner

cc: Gail Wippelhauser, Oliver Cox, Paul Christman, DMR
John Perry, Jason Seiders DIFW
Kathy Howatt, DEP
Steven Shepard, USFWS
Sean McDermott, Jeff Murphy, NOAA