
APPENDIX A1

CONSULTATION RECORD

FEA FILING TO LICENSE APPLICATION FILING

Scott's Mill Hydropower Project

FERC Project No. 14867

Smith, Scott <scott.smith@dwr.virginia.gov>

To:Palmer George nqh95780,Ernst Aschenbach,Weaver Lawless ure27863,david_sutherland@fws.gov,Jessica Pica,Cario, Anthony,Wayne Dyok,Mark FendigHide

Sun, Aug 16, 2020 at 2:46 PM

All,

Attached are the comments I am submitting to FERC regarding the Scotts Mill application for license exemption. Please let me know if you have any questions.

Scott

--



Scott M. Smith

Regional Fisheries Manager

P 434.525.7522 / **M** 434.907.2793

Virginia Department of Wildlife Resources

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COMMONWEALTH of VIRGINIA

Matthew J. Strickler
Secretary of Natural Resources

Department of Wildlife Resources

Ryan J. Brown
Executive Director

August 16, 2020

Secretary Kimberly D. Bose
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 201426

**Re: Scotts Mill Hydroelectric Project (P-14867) – Application for New License Exemption
Virginia Dept. of Wildlife Resources Comments on Application for License Exemption**

Dear Secretary Bose:

Thank you for the opportunity to provide input into the licensing process for the Scotts Mill Hydroelectric Project (P-14867). The mission of the Virginia Dept. of Wildlife Resources (DWR; formerly Dept. of Game and Inland Fisheries) is to conserve and manage wildlife populations and habitat, connect people to Virginia's outdoors, and protect people and property by promoting safe outdoor experiences. Additionally, VDWR is the state agency responsible for managing aquatic and terrestrial wildlife resources, including rare/listed species of fish and wildlife.

We have reviewed the documents submitted by Scotts Mill Hydro, LLC (Applicant). Based upon our review, and after extensive consultation with the Applicant and other stakeholders, we offer the following comments regarding the application. Additionally, we concur with the comments submitted by the U.S. Fish and Wildlife Service (USFWS) regarding this project.

Several aspects of this project are not fully developed, including fish passage facilities, recreational enhancements, fish entrainment/impingement, downstream habitat impacts, and others. We will work with the Applicant and stakeholders to adaptively manage these issues, as outlined in the Agreement in Principle (AIP) signed by the Applicant, USFWS, and DWR. We have listed specific areas of concern below, but believe that these issues will be cooperatively solved among the Applicant and stakeholders, based upon the AIP.

Fish Passage

The Applicant has agreed to provide immediate, safe, and effective upstream passage for American Eel and Sea Lamprey, which we support. We request that this be included as a condition of the License Exemption.

The Applicant also intends to provide effective downstream passage for all species based upon the design of the powerhouse, using a similar design to that found on the Willamette Falls project. In theory, this design appears to be sound, but will need additional monitoring to determine its efficacy. Should downstream passage not prove to be effective, we would like to work with the Applicant to make modifications to the project to achieve a downstream passage success rate of approximately 95% (+/- 5%). We would ask that this be included as a condition of the License Exemption.

At the present time, other anadromous species (e.g., American Shad) are not present in the project area. However, they may become abundant enough at some point in the future to warrant fish passage efforts. As outlined in the

AIP and the application for exemption, we agree to work with the Applicant and stakeholders to evaluate the future need for passage of anadromous and resident fish species. If we collectively determine such a need exists, we also agree to work with the Applicant to design suitable fish passage infrastructure to provide safe, timely, and effective passage for these species. Once the need is ascertained and the necessary infrastructure designed, we would suggest that this be constructed and operated by the Applicant, as outlined in the AIP and the application. We request that this be included among the conditions for the new License Exemption.

Recreational Enhancements

The Applicant proposes to construct a canoe portage and bank fishing area at the dam, as well as a hardened boat ramp in the pool upstream from the dam. We fully support these proposals. However, as the land acquisition and engineering designs for these facilities are currently incomplete, there is the potential that some/all of these planned enhancements may not be feasible due to multiple possible issues (examples include inability to procure the necessary property, traffic engineering problems, construction design difficulties, etc.). Should that prove to be the case, we suggest the Applicant provide a bank fishing access (if the planned pier is not constructed) and/or a boat ramp (if the planned boat ramp is not constructed) at alternative locations on the James River (to be determined in consultation with USFWS and DWR). We request that this or similar language be included as a condition in the Exemption.

Downstream Habitat and Water Quality

The Applicant proposes to provide a minimum ½" veil of water over the spillway to maintain downstream habitat and water quality conditions, as well as locating the powerhouse in such a manner as to provide flows to the north (east) side of the river. Because the proposal has been based upon untested data, and because the powerhouse has yet to be installed and operated, actual conditions in the tailrace may differ from predicted ones. As a result, habitat and/or water quality conditions below the dam may be negatively altered as a result of operations. The applicant and the AIP both state that the Applicant will work with stakeholders to monitor habitat and water quality conditions below the dam once construction is completed and operations begin. Should we (Applicant, VDWR, USFWS, and Virginia Dept. of Environmental Quality) collectively determine that any alterations are unacceptable, we suggest the Applicant should modify the infrastructure and/or operations to correct these issues. This will require some level of adaptive management on the part of the Applicant and stakeholders. We ask that this be included as a condition of the License Exemption.

We greatly appreciate the opportunity to provide comments on the Application for License Exemption submitted by the Applicant. Should there be any questions, please contact Scott Smith at 434/525-7522 or scott.smith@dwr.virginia.gov.

Sincerely,



Scott M. Smith
Regional Fisheries Manager

CC: G. Palmer – VDWR
E. Aschenbach – VDWR
A. Weaver – VDWR
D. Sutherland – USFWS
J. Pica – USFWS
T. Carrio – VDEQ
W. Dyok
M. Fendig

Sutherland, David <david_sutherland@fws.gov>

To: Wayne Dyok, Scott Smith

Cc: Mark Fendig, Tittler, Andrew

Thu, Oct 29, 2020 at 12:50 PM

Wayne, I think a conference call would work best for us. We are having an internal call tomorrow. Does Mr. Fendig want to finalize the settlement agreement? Talk to you soon, David

David W. Sutherland

Coastal Biologist

U.S. Fish and Wildlife Service

Chesapeake Bay Field Office

177 Admiral Cochrane Drive

Annapolis, MD 21401

410-573-4535 (O)

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Wayne Dyok

Cc: david_sutherland@fws.gov, Jessica Pica, Weaver Lawless ure27863

Fri, Oct 30, 2020 at 12:50 PM

Hey Wayne,

We had a call today to discuss the issues at Scotts Mill. We are all available for a call the afternoon of Nov 12. If you need to speak with us sooner than that, you can just call us individually. On today's call we decided that, given the uncertainty surrounding the license/exemption application, we would feel better if we had a settlement agreement to support the license/exemption. So, David has agreed to put together the first draft of a settlement agreement, based on the AIP. Based upon FERC's comments, you'll need a quick decision regarding some of these issues, so we'll do our best to expedite things.

With regards to the 2 issues you bring up in your email below, here's some feedback based on today's call. For the boat access, I think we can put this into a settlement agreement instead of the Exemption Application, but we'll need to check with some of our folks to verify that this would work. Also, if we do come up with something outside the scope of the license, we'd like it added to the license as an amendment once it's done. That way, it stays with the project should it get sold at some point. With regards to the estimated costs mentioned by FERC, it's probably best if you just give David and I a call sometime to make sure we understand what exactly FERC is looking for here. Once we know that, we should be able to work up some rough estimates. This can be done separately, to avoid having to coordinate schedules.

I think this takes care of the immediate needs, but please let us know if there are other items. Otherwise, we'll talk as a group on the 12th (if you're available), and sooner as individuals (if that's needed). We'll provide the draft of a settlement as soon as we get that knocked out, and we'll do our best to make that available as soon as possible.

Scott

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Scott M. Smith

Regional Fisheries Manager

P 434.525.7522 / **M** 434.907.2793

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Smith, Scott <scott.smith@dwr.virginia.gov>

To: Wayne Dyok

Cc: Sutherland, David, Mark Fendig, Thornton James

Tue, Jan 12, 2021 at 1:11 PM

Wayne,

I've asked George Palmer to get the raw fish data for the sites on the James near Scotts Mill. It'll just be a couple spreadsheets with fish numbers/lengths, etc. on it; so nothing fancy. I think this should satisfy FERC, as my assumption is that they simply want to see how many samples the fish data are based upon. If you want something different, let us know.

NOTE COMMENTS RELATED TO BEDFORD HYDRO DELETED FROM THIS EMAIL CONSULTATION..

Scott

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Palmer, George <george.palmer@dwr.virginia.gov>

To: dyok@prodigy.net

Cc: Smith Scott iqu27897

Tue, Jan 12, 2021 at 1:39 PM

Wayne,

Attached is the raw data from 1991-2020 for your reference from three sites on the James near the Scotts Mill Dam (directly below Scotts Mill Dam called the Lynchburg site, pool above Scotts Mill Dam called Red-&-Dots, and the pool at Monacan Park).

Let me know if you have any questions or require further information.

Thanks

George

--



George Palmer

District Fisheries Biologist

P 434.525.7522 / **M** 276.780.0460

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NOTE ATTACHMENT NOT INCLUDED IN CONSULTATION RECORD. DATA WAS USED TO UPDATE APPLICATION.

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Wayne Dyok, Jim Thornton

Cc: Palmer George nqh95780

Mon, Feb 1, 2021 at 11:58 AM

Wayne and Jim,

See the attached spreadsheet. I think this is what FERC was looking for. If they have questions about the data, they should probably contact George Palmer. Let us know if this isn't what you needed, or if you've got further questions.

Scott

----- Forwarded message -----

From: **Palmer, George** <george.palmer@dwr.virginia.gov>

Date: Mon, Feb 1, 2021 at 11:34 AM

Subject: Re: Scotts Mill FERC License Data Needed

To: Smith, Scott <scott.smith@dwr.virginia.gov>

Check out this file, I think I have everything you asked for. Three tabs as you requested

On Fri, Jan 29, 2021 at 4:47 PM Smith, Scott <scott.smith@dwr.virginia.gov> wrote:

GP - Looks like the raw data wasn't good enough. It looks like they want a couple of different tables. Here's what I suggest we send them:

- CPUE table for Lynchburg and Monocan sites only. This would include site, year, date (month is fine), and effort.
- A table with eel CPUE that would include site, effort, year for all sites from say Scottsville to Snowden.
- A table with eel TL. This would basically be the raw data with eel length, year, and location.

I think that should do it for FERC. Also, if you could get to it within the next couple of weeks, that'd be great. Let me know if there are any questions. Anx.

SS

----- Forwarded message -----

From: **Jim Thornton** <runnerjim@gmail.com>

Date: Fri, Jan 29, 2021 at 3:30 PM

Subject: Scotts Mill FERC License Data Needed

To: Smith, Scott <scott.smith@dgif.virginia.gov>

Cc: Wayne Dyok <dyok@prodigy.net>

Scott,
Thanks for the information provided earlier. There is a bit more information we need in order to address what FERC has call deficiencies in the license. Is it possible you could provide the following information:

Per FERC's letter:

1. Summaries of the resident fish community at the project (e.g., in section 6.3.3.1.4 of Exhibit E) are not project-specific and are instead based on sampling data that are Schedule C Project No. 14867-001 C-4 pooled across large portions of the James River (e.g., river mile 104 to 228). To allow staff to more accurately assess the potential effects of the project on the local fish community, please provide more precise location-specific fish survey data (ideally from the project impoundment and immediately downstream of the dam). If such project specific data are not available, please report fish survey and associated catch data from the nearest available locations upstream and downstream of Scott's Mill Dam. To support staff's analysis, please include information on the sampling gear, effort, location, and dates of the fish survey data that were used, as well as any fish size data that were collected.

(NOTE: Attached is section 6.3.3.1.4)

2. Table E-6-4 of Exhibit E provides catch-per-unit effort (CPUE) data for eels at Scott's Mill Dam and other nearby dams on the James River, but provides no indication of the level of sampling effort upon which these data (boat electrofishing) are based. Therefore, for all CPUE estimates in Table E-6-4, to the extent that information is available, please indicate the number of hours (e.g., pedal time), dates, and locations of boat electrofishing samples upon which these CPUE estimates were based, as well as any eel length data that are available from these surveys.

NOTE: Table 6.4 specifies that the CUPE₃ downstream of Scotts Mill is 6.68, upstream 7.02; Rusens upstream is 0.25; Coleman falls upstream is 0.10; and Cushaw is 0.00.

If you would like to call and discuss on Monday, that would be fine. However, as usual FERC wants responses pretty quickly. Thanks in advance for your help.

Jim Thornton

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Scott M. Smith

Regional Fisheries Manager

P 434.525.7522 / **M** 434.907.2793

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--

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Wayne Dyok

Cc: Jim Thornton, Palmer George nqh95780

Wed, Feb 10, 2021 at 1:49 PM

Wayne and Jim,

It looks like you've got all the eel data that FERC wanted. As for the fish community data, I think you've got that as well (the 2 sites that FERC appeared interested in would be Lynchburg [RKM 414] and Monocan Park [RKM 428]). However, I'm not positive that we sent you the fish community data, so let us know if you still need that.

As to their other questions, all data was collected with boat electrofishing gear in the fall (Sep 15-Nov 15) in most years. We try to hit all those sites annually, but some years we get washed out or have equipment malfunctions, so not every single site gets sampled every single year. Effort at each site is a minimum of 1 hr, but frequently exceeds that by 25-50%. Immediate sample locations of interest to FERC (Lynchburg and Monocan Park) are located immediately downstream from Scotts Mill Dam and in the pool behind Reusens Dam. We have some older data from the Scotts Mill Pool (Red & Dots site - RKM 418), but that access has been closed for many years now, so nothing recent. We do have total lengths recorded for all fish collected, and can send that to you, but it's a whole lot of data points. If that's what they'd like to see, we'd be happy to provide it for those 2 sites.

So, let us know if you need the fish community data, as we can send that your way (assuming we haven't already).

SS

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Jim Thornton

Cc: Wayne Dyok, Palmer George nqh95780

Wed, Feb 10, 2021 at 1:53 PM

Jim,

Yes, TL is total length. The reason you don't see anything in the 4th tab for those other years is that eels were only counted (not measured) in those years. So, we have abundance data for them, but not length. We measured the eels in '12 and '19 at Monocan Park. So, for that reason, there are no entries in the length spreadsheet for those other years. We still netted and counted eels, but didn't measure them. Don't know if you've ever tried to measure an eel, but it's not an easy proposition. There's a whole lot of merit to the saying, "slippery as an eel"...

SS

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--**Smith, Scott** <scott.smith@dwr.virginia.gov>

To: Wayne Dyok

Wed, Feb 10, 2021 at 1:56 PM

Hey Wayne,

Forgot to answer your question regarding the settlement agreement. David got a draft together and we're reviewing it this week. Alan took the first crack at it, and I've got it now and hope to get it to Jessica by tomorrow or Friday. I think she's tied up this week anyway, and will try to review it sometime next week. So, it's close to being in your hands.

SS

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Wayne Dyok

Thu, Feb 18, 2021 at 3:18 PM

Wayne,

Just to give you a quick update, we've all been through the draft of the settlement agreement. David is currently revising it. I'm not positive if he's planning to have any further USFWS review, but I think that's what he's thinking. You might check with him to see when he's thinking of sending it to you and Mark, and if you're under any sort of tight timeline he should probably be aware of that.

Scott

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Sutherland, David <david_sutherland@fws.gov>

To: Wayne Dyok

Cc: Smith, Scott

Mon, Mar 1, 2021 at 1:37 PM

Wayne, do you have time to talk tomorrow? David

Scott's Mill has been working in good faith with the US Fish and Wildlife Service and the Virginia Department of Wildlife Resources to finalize a settlement agreement that incorporates the Agreement In Principle. We expect to receive the draft agreement from the US Fish and Wildlife Service the first week in March and are hoping that the settlement agreement can be signed by the end of the month.

Lastly, Scott's Mill has not yet received the estimate of costs from the US Fish and Wildlife Service and the Virginia Department of Wildlife Resources per Section 4.301 of the Commission's regulations. We expect to receive that estimate from the agencies soon and will include the associated fee or bond as part of our filing.

David W. Sutherland

Coastal Biologist

U.S. Fish and Wildlife Service

Chesapeake Bay Field Office

177 Admiral Cochrane Drive

Annapolis, MD 21401

410-573-4535 (O)

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Wayne Dyok

Cc: david_sutherland@fws.gov, Weaver Lawless ure27863, Jessica Pica

Thu, Mar 25, 2021 at 1:27 PM

Wayne,

I took a stab at estimating our costs associated with Terms & Conditions. It's in the attached spreadsheet. Right up front I will tell you that I've not done this before, so this is a really rough estimate. Additionally, I "started the clock" with the settlement agreement, and not positive that's the correct starting point. This stuff can be adjusted as needed, but I'll need some feedback as to what's appropriate and what isn't. Finally, all the follow-up stuff is a complete guess on my end. I don't know how accurate it may be, so there's some room to adjust things there as well. The bottom line is that I'm not positive I picked the correct "starting point", and I'm also really just guessing on a lot of the follow-up work. I'm happy to discuss any adjustments you feel might be appropriate.

SS

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Scott M. Smith

Regional Fisheries Manager

P 434.525.7522 / **M** 434.907.2793

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Smith, Scott <scott.smith@dwr.virginia.gov>

To: Wayne Dyok

Cc: david_sutherland@fws.gov, Mark Fendig

Tue, Mar 30, 2021 at 10:18 AM

Ok, I will be away most of this afternoon, but will check email this evening. I think David is finalizing the details with his folks. So,, I'll wait on him to see what he comes up with, and then I'll send something similar. It'll be sometime this evening at the earliest.

SS

Hide original message

On Tue, Mar 30, 2021 at 12:37 PM Wayne Dyok <dyok@prodigy.net> wrote:

Hi David and Scott, I spoke with FERC this morning and they are fine with the USFWS and VDWR waiving the agency costs and including them in the Settlement Agreement. As we discussed last week, they requested that you send me an email to that effect which I will include in the filing tomorrow.

Regards,

Wayne

Sutherland, David <david_sutherland@fws.gov>

To: Wayne Dyok

Cc: Scott Smith

Wed, Mar 31, 2021 at 9:04 AM

Wayne, please see our cost estimate and text. David

From: Sutherland, David

Sent: Tuesday, March 30, 2021 2:44 PM

To: Tittler, Andrew <Andrew.Tittler@sol.doi.gov>

Subject: RE: Scotts Mill

Wed, Mar 31, 2021 at 9:44 PM

scottsmillhydro@yahoo.com <scottsmillhydro@yahoo.com>

To: dyok@prodigy.net

Wed, Mar 31, 2021 at 9:44 PM

Dear Interested Party

It's been about 9 months since we last communicated with you on our exemption application filing in June 2020. We appreciate that much has happened over that period. We certainly hope that everyone is making it through these uncertain times.

From July through October 2020, FERC reviewed our exemption application and on October 28, 2020, issued a deficiency letter (attached to this email). Our initial response was filed with FERC on November 20, 2020 (also attached). In that letter, Scott's Mill reaffirmed its desire to move forward with the license exemption. To meet FERC's requirements of having ownership or control of all lands within the project boundary to qualify for the exemption, Scott's Mill modified the project boundary to exclude the Liberty University (LU) parcel upon which the boat ramp was to be located. Although LU is amenable to leasing the parcel to Scott's Mill, no lease agreement has yet been reached. Scott's Mill has ownership and flowage easement rights for all lands within and adjacent to the project boundary and therefore believes that it qualifies for an exemption.

From November 2020 through February 2021, Scott's Mill coordinated with various parties to respond to FERC's information requests. In particular, Scott's Mill has worked closely with the USFWS and Virginia Department of Wildlife Resources (VDWR) to convert the Agreement In Principle (AIP) to a Settlement Agreement (SA). We are continuing to work on the SA and hope to have in consummated in the next couple of months.

In late February, Scott's Mill requested a one month extension to file its responses to the information requested by FERC. On March 2, 2021 FERC granted that request. During March, Scott's Mill completed the responses to FERC's information request and filed that information earlier today. The filing includes two files that are also attached. The FERC Deficiency response answers each of the FERC information requests and includes several appendices including the property deed, wetland information and a dam stability analysis. The Excel spreadsheet included was not easily converted to a PDF and is included as a separate file that summarizes 20 years of fish data collected by VDWR. Included in the PDF is a map of part of the project boundary. The portion of the project boundary that includes all project facilities is included in the responses. The remainder of the project boundary follows the shoreline up to the upstream Reusens FERC project boundary, excluding the islands as these are not needed for project operations. Since Exhibit G is in an electronic format required by FERC and not readily available to most of us, I have not included that file in this email.

One of the requirements of an exemption is for resource agencies to provide costs estimates for preparing terms and conditions and for the applicant to pay these costs with their filing. In this case, the agencies have waived their fees, but they will be included in the SA. I have included the information provided by the agencies as separate attachments. Because of the filing deadline, we were not able to include these documents in today's filing but they will be filed with an effective date for tomorrow. Scott's Mill very much appreciates all the hard work done by both the USFWS and VDWR to support our filing and work on the SA.

Since it has been 9 months from our last email and given that COVID may have caused numerous changes in personnel, several of our email addresses may be outdated. We request your support in letting us know who else you believe should be copied on this distribution. Because of privacy concerns though, we are not providing anyone's email addresses on this email. However, there is a distribution

list provided after the cover letter that you can check. If we receive undelivered emails, we will do our best to contact appropriate parties that may have been missed.

Lastly the Lynchburg New and Observer will be publishing a public notice for the project. It was either in today's paper or it will be in tomorrow's paper.

Kindest regards,
Wayne

Cario, Anthony <anthony.cario@deq.virginia.gov>

To:scottsmillhydro@yahoo.com

Cc:Wayne Dyok,Joe Grist

Fri, Apr 2, 2021 at 12:16 PM

Wayne,

Thanks for the update. Please send me your timeframe for submitting the information requested in our additional information letters (attached) so that we may continue with processing the VWP permit application.

Thank you

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Tony Cario

Environmental Specialist
Office of Water Supply
Department of Environmental Quality
P.O. Box 1105, Richmond, VA 23218
804-698-4089
anthony.cario@deq.virginia.gov
www.deq.virginia.gov

Wayne Dyok <dyok@prodigy.net>

To:scottsmillhydro@yahoo.com,Cario, Anthony

Cc:Joe Grist,Mark Fendig

Sun, Apr 4, 2021 at 2:43 PM

Hi Tony. Happy Easter.

Mark has been taking the lead on the Joint Application with Ben Leatherland. However, I will be in Virginia the week of April 12th can discuss this further with him at that time.

Regards,

Wayne

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Wayne Dyok <dyok@prodigy.net>

To: Wayne King

Tue, Apr 6, 2021 at 12:21 AM

Hello Wayne. FERC Washington, DC directed Scott's Mill Hydro to send the attached documents to FERC's regional office with jurisdiction over Virginia Projects. This should have been sent to you on March 31st. When I crosschecked the distribution list, I see you were not included on the Scottsmillhydro Yahoo email distribution. Please accept my apologies for the late transmission. Please let me know if I should send this to others in FERC's Atlanta office or if I need to send a hard copy of the documents. They are also available on our website at <http://www.Scottsmillhydro.com>.

If okay with you, I will add you to the email distribution list.

Regards,

Wayne Dyok

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Sutherland, David <david_sutherland@fws.gov>

To: Wayne Dyok, Scott Smith
Thu, Apr 8, 2021 at 5:58 AM

Wayne, I will have better idea in a day or so and will respond. David

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From: Wayne Dyok <dyok@prodigy.net>
Sent: Wednesday, April 7, 2021 2:41 PM
To: Sutherland, David <david_sutherland@fws.gov>; Scott Smith <scott.smith@dwr.virginia.gov>
Subject: [EXTERNAL] Scott's Mill - Settlement Agreement

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi David and Scott. First thank you for your timely emails on the terms and conditions costs. The narratives were much appreciated.

I plan to be in Lynchburg from Wednesday through Friday of next week. It would be great if Mark and I could get a draft of the Settlement Agreement by the middle of next week so we can review it together. If that is not possible, can you give me a sense of when you expect to get the draft to us. Thanks.

Regards,

Wayne

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Wayne Dyok

Cc: david_sutherland@fws.gov, Mark Fendig, mfendig@yahoo.com

Wed, Apr 14, 2021 at 2:56 PM

Wayne,

There was no attachment, but I can certainly be available for a conference call tomorrow. Also, we'll need to bring our boating access folks into the mix at some point. We can see if they might be available tomorrow, or we can bring them in at another time. I can't speak for all the ins and outs of boat access, but I do think that we have pretty standard liability waivers (or something similar) that would apply here. With regards to maintenance, I don't know how they are working that these days, so I wouldn't want to speak for them on that issue. I have something scheduled for 6 pm, but the rest of the day is pretty open.

SS

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On Wed, Apr 14, 2021 at 5:24 PM Wayne Dyok <dyok@prodigy.net> wrote:

Hi Scott and David. I did not hear back from you re my request to see a copy of the draft Settlement Agreement while I am in Virginia with Mark. I will be here through Friday. Hopefully, I can get a rough draft by COB tomorrow. It doesn't need to be final at this time.

I am attaching the Letter of Interest from Liberty University on constructing a boat ramp at 747 River Road. Scott, if you have a few minutes tomorrow could you, Mark and I chat about a path forward? LU would like to hear back from VDWR that you are on board with the boat ramp and that you would work with LU and us to get the necessary permits. Mark's and my thinking is that it might be best to do a three-way agreement with LU, Scott's Mill and VDWR and leave out FERC since this is an exemption and we will be getting the Terms and Conditions from the agencies. LU wants to ensure that they are not liable, and there is the issue of management. We likely need to plug Dean Rodgers in from Amherst County as well in the near future.

Regards,
Wayne

Sutherland, David <david_sutherland@fws.gov>

To: Wayne Dyok, Scott Smith

Cc: Mark Fendig

Fri, Apr 30, 2021 at 4:33 AM

Wayne, I am in the field this morning and have been all week. I may have some time to work on it later today. I still needs to go back to Andrew T. before you will see it. David

Hide original message

From: Wayne Dyok <dyok@prodigy.net>

Sent: Thursday, April 29, 2021 1:54 PM

To: Sutherland, David <david_sutherland@fws.gov>; Scott Smith <scott.smith@dwr.virginia.gov>

Cc: Mark Fendig <mfendig@aisva.net>

Subject: [EXTERNAL] Scott's Mill Settlement Agreement

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Hi David. Did I somehow miss receiving the draft settlement agreement for Scott's Mill? If we are going to help FERC with their NEPA analysis by having a signed settlement agreement, we really need to get this wrapped up. We would really appreciate receiving a draft version of the document by May 1, 2021.

Regards,

Wayne

Smith, Scott <scott.smith@dwr.virginia.gov>

To:Mark Fendig

Cc:Wayne Dyok,david_sutherland@fws.gov,Palmer George nqh95780,Peter Schula

Wed, May 5, 2021 at 2:20 PM

Wayne and Mark,

See attached for a letter of support for the boating access site. Please let me know if this will suit your needs. If you needed something a little different, let me know and I can modify things. Also, sorry I wasn't able to get this to you sooner.

Scott

--



Scott M. Smith

Regional Fisheries Manager

P 434.525.7522 / **M** 434.907.2793

Virginia Department of Wildlife Resources

CONSERVE. CONNECT. PROTECT.

A 1132 Thomas Jefferson Rd., Forest, VA 24551

www.VirginiaWildlife.gov

Matthew J. Strickle

Secretary of Natural Resources

COMMONWEALTH of VIRGINIA

Department of Wildlife Resources

Ryan J. Brown

Executive Director

5 May 2021

Mr. Mark Fendig
Scotts Mill LLC

Dear Mark:

I am writing on behalf of the Virginia Dept. of Wildlife Resources in regards to the possible development of a boating access location in the pool upstream from Scotts Mill Dam on the James River. As the fishing and boating agency for the Commonwealth of Virginia, we support the use of our natural resources by anglers and boaters.

Currently, there are no public access points on the James River between Reusens Dam and Scotts Mill Dam. This river segment is located adjacent to the City of Lynchburg, VA, and there exists a high demand for water-related recreational access in the area. Additionally, upstream and downstream access points on the James River currently receive a very high degree of use by anglers and boaters. In short, there is a high, and increasing, demand for public access to the James River in the project area.

As an agency, we are highly supportive of the efforts by Scotts Mill LLC to initiate the development of a public boating access location between Reusens and Scotts Mill dams. There currently exists a need for additional James River boating access sites, particularly at this location. As such, the planned development of this facility will provide significant natural resource and community benefits. We would strongly encourage Scotts Mill LLC to continue the pursuit of this access development project.

Should there be any questions, or if further information is needed, please contact me at scott.smith@dwr.virginia.gov or via phone at 434/525-7522.

Best regards,

/s/ Scott M. Smith
Regional Fisheries Manager

Cc: Wayne Dyok
George Palmer
Pete Schula
David Sutherland

[Dean Rodgers](mailto:dcrodgers@countyofamherst.com) <dcrodgers@countyofamherst.com>

To: Wayne Dyok

Cc: Jeremy Bryant, Brian Thacker, Mark Popovich

Thu, May 13, 2021 at 12:01 PM

Thanks, Wayne. Do you have a design of what you/Liberty intend to build? It makes a real difference to the folks who might oppose this and we want to have full information.

Dean C. Rodgers

Amherst County Administrator

(434) 946-9400

The mission of Amherst County's government is to nurture a vibrant and healthy community through transparent and fiscally responsible leadership and quality public services.

Hide original message

From: Wayne Dyok <dyok@prodigy.net>

Sent: Thursday, May 13, 2021 1:56 PM

To: Dean Rodgers <dcrodgers@countyofamherst.com>

Cc: Mark Fendig <mfendig@aisva.net>; Scott Smith <scott.smith@dwr.virginia.gov>

Subject: [EXTERNAL]Scott's Mill Hydro Project - Headpond Recreational Boat Ramp Location

Hi Dean. Thank you for taking the time to talk about the proposed Scott's Mill Project boat ramp off River Road in Amherst County. Per your request, please find attached the old Exhibit G which shows the location of the boat ramp (Off River Road, NW of Kings Road). The boat ramp was removed from the project boundary because Scott's Mill has not signed a lease with the owner of the property (Liberty University) and to qualify for an exemption, an applicant must demonstrate that they have ownership or control over all lands within the project boundary. Nonetheless, Scott's Mill is committed to providing a boat ramp as part of the project.

Scott's Mill would like to hear from Amherst County if the County supports the proposed boat ramp. Assuming that is the case, we will need to work on the liability issue with the County, Commonwealth of Virginia, Liberty University and Scott's Mill to craft an agreement mutually satisfactory to all parties.

Please let us know your thoughts after conferring with your County colleagues.

Regards,

Wayne

Sutherland, David <david_sutherland@fws.gov>

To: Wayne Dyok

Cc: Mark Fendig, Thornton James, Scott Smith, Murphy, Dan R, Tittler, Andrew and 1 more...

Thu, Jun 10, 2021 at 5:11 AM

Wayne, I just got a draft back from our Solicitor with comments. In particular, a number of comments and questions asking us to pin down more precisely what needs to be done, and when. I plan to work on it next week. Sorry for the delay. David

Hide original message

From: Wayne Dyok <dyok@prodigy.net>

Sent: Thursday, June 10, 2021 7:46 AM

To: Sutherland, David <david_sutherland@fws.gov>

Cc: Mark Fendig <mfendig@aisva.net>; Thornton James <runnerjim@gmail.com>; Scott Smith <scott.smith@dwr.virginia.gov>

Subject: [EXTERNAL] Scott's Mill - Settlement Agreement

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi David. I am still waiting for the draft settlement agreement for Scott's Mill. Since I told FERC we expected to be filing a signed agreement in April or May, they may be holding up their analysis and notices. I think the statute of limitations is running out for the draft settlement agreement. Realistically, when can we expect to receive something from thh USFWS?

Regards,

Wayne

Sutherland, David <david_sutherland@fws.gov>

To: Wayne Dyok

Cc: Scott Smith, Pica, Jessica E, Tittler, Andrew, Murphy, Dan R

Thu, Jul 1, 2021 at 4:53 AM

Wayne, I just asked Scott VDWR a question about the status of the public access arrangements, and I plan to have my edits to Jessica COB today. They likely will go back to Andrew and then to you. Thank you, David

From: Wayne Dyok <dyok@prodigy.net>

Sent: Wednesday, June 30, 2021 4:23 PM

To: Sutherland, David <david_sutherland@fws.gov>; Scott Smith <scott.smith@dwr.virginia.gov>

Subject: [EXTERNAL] Cushaw Settlement

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

David - Any movement on the settlement agreement? Since I have not heard anything from FERC, I think they may be waiting for us to submit the agreement. Any chance we can get a draft next week?

Wayne

Sutherland, David <david_sutherland@fws.gov>

To: Wayne Dyok

Cc: Smith, Scott, Weaver, Lawless (DWR), Tittler, Andrew, Pica, Jessica E, Murphy, Dan R

Tue, Aug 10, 2021 at 9:44 AM

Wayne, please see the attached draft settlement agreement for Scotts Mill. David

David W. Sutherland

Coastal Biologist

U.S. Fish and Wildlife Service

Chesapeake Bay Field Office

177 Admiral Cochrane Drive

Annapolis, MD 21401

410-573-4535 (O)

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Jim Thornton

Cc: Smith, Scott, Wayne Dyok

Mon, Sep 20, 2021 at 8:13 AM

Hey Jim, hope things are going well. See below for the secret decoder ring translations....

COS - Common Shiner
CRS - Crescent Shiner
CYS - Comely Shiner
GOS - Golden Shiner
LDF - Should actually be LFD - Longfin Darter
MMS - Mimic Shiner
RFS - Rosefin Shiner
ROD - Roanoke Darter
RRC - River Chub
RYS - Rosyface Shiner
SFS - A typo - Should be SNS - Satinfin Shiner
SID - Shield Darter
SNS - Satinfin Shiner
SPS - Spottail Shiner
SUN - hybrid sunfish (or unidentified Lepomis sp.)
TLS - Telescope Shiner
TSS - A typo - should be TLS - Telescope Shiner
WAM - Warmouth
YEB - Yellow Bullhead

Hope that's what you needed.

SS

Hide original message

On Mon, Sep 20, 2021 at 10:30 AM Jim Thornton <runnerjim@gmail.com> wrote:

Hey Scott,

Back in Jan or Feb you sent me a lot of fish data for FERC's request for additional data related to the Scotts Mill License Application. I did a bunch of summary tables for major species, but the FERC biologist I consulted asked that I include any raw tables I had. I included the raw data you provided me. In that raw data, there are 19 fish species acronyms that did not have a corresponding fish description attached to them. FERC is now requesting that we identify each of these abbreviations. They are COS, CRS, CYS, GOS, LDF, MMS, RFS, ROD, RRC, RYS, SFS, SID, SNS, SPS, SUN, TLS, TSS, WAM and YEB. Would you please provide the corresponding fish identification for each of these. Thanks.

Jim Thornton

PS: I am working on responding to FERC's latest additional information request, so more "needs" may be coming.

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Jim Thornton

Cc: Smith, Scott, Wayne Dyok, Palmer George nqh95780

Mon, Sep 27, 2021 at 3:46 PM

Hey Jim,

I can provide most of the info you need.

Sampling gear was boat electrofishing - Smith/Root 5.0 GPP unit mounted in an aluminum boat.

Sampling was all done during the day (morning or afternoon).

I don't have the exact sampling dates for most of those sites. They are on the original data sheets, but we didn't record the sample date in the electronic files. Sampling always falls in the Sep 20-Nov 15 timeframe each year. We start sampling when water temps get below 25C and keep going until they get too cold, usually by mid-Nov. If they really, really need the exact sample dates, we can probably dig through the old paper data sheets to get that, but it won't be easy or quick.

Lengths are all total length.

Scott

Hide original message

On Mon, Sep 27, 2021 at 5:50 PM Jim Thornton <runnerjim@gmail.com> wrote:

Scott, some more info is needed per FERC request related to Lynchburg fisheries data.

FERC requested the type of sampling gear utilized for fish surveys.

FERC requested time of day surveys were conducted (morning, afternoon, evening or night)

FERC requested date sampling occurred. Note, We are using only Lynchburg, Reds and Dots and Monican Pond. I need only dates for Reds and Dots

Finally, for length, is the length measured total or fork?

I am attaching what you sent me in January.

Appreciate the help.

Jim T.

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Wayne Dyok

Sun, Nov 14, 2021 at 10:49 AM

Ok, so it looks like we can meet on **Nov 22nd at 1 pm**. The info below should get you to the Google Meeting.... I hope....

Scotts Mill Conf call

Monday, November 22 · 1:00 – 2:00pm

Google Meet joining info

Video call link: <https://meet.google.com/wby-whvh-yhx>

Or dial: (US) +1 516-595-9613 PIN: 259 644 021#

More phone numbers: <https://tel.meet/wby-whvh-yhx?pin=2433730723200>

Hide original message

On Fri, Nov 12, 2021 at 3:12 PM Smith, Scott <scott.smith@dwr.virginia.gov> wrote:

Everyone,

It looks like we are ready to discuss the latest draft of the SA for SMD, so I figured I'd propose a few dates for a call. I set up a Doodle poll to pick a date. I just picked a couple of potential times, but we can adjust those if we need to fit someone's schedule. I think we're really close to wrapping this up. So, if you could respond to the Doodle poll in the next few days, we should be able to schedule something relatively quickly. Thanks and have a good weekend.

https://doodle.com/poll/d34y8yx5n2kz83rw?utm_source=poll&utm_medium=link

Scott

On Fri, Oct 29, 2021 at 1:49 PM Wayne Dyok <dyok@prodigy.net> wrote:

All, Mark Fendig and I have reviewed the draft settlement agreement and offer our comments on the attached draft. In essence we are supportive of the agreement. We also agree with Scott Smith's comments. In addition to our specific comments in the document, we wanted to highlight three items.

First, Mark would like to offer that if for some reason the project is not built (e.g., FERC does not issue an exemption or license), then he would commit to working with the USFWS and DWR to obtain grant funding to install fish passage. Should we include that in the settlement agreement?

Second, re flows through the headpond and discharged over the fish bypass, at maximum powerhouse flows the bypass flow seems fine. However, at very low flows, we should consider what is needed to have the downstream migrants pass safely downstream. Perhaps a lower flow would work in such situations. The CFD modeling should shed some light on that.

Third, Mark and I would like to see some examples of east coast projects that have 3/4 inch trash rack spacing in riverine systems like the James. (Does the Potomac have projects with that spacing?) Our concern is that with such a small spacing, the leaves and other debris being passed downstream could present an operational nightmare. Of course our goal is to avoid any fish from being entrained in the first place and that is why we are orienting the powerhouse more or less in parallel with the flow. The 95 percent effectiveness criteria seems reasonable.

Perhaps we can have a conference call to review the comments in the next week or two. We are fully available the week of November 8 and mostly available Wednesday through Friday of next week.

Also to update you on our rehearing request, we have filed additional information with FERC that demonstrates we own all lands necessary for project development. In our minds, the only issue is whether adding a cap or flashboards constitutes modifying the existing environment. Our goal was to

maintain water levels upstream as close as possible to existing conditions. The only way to preserve water levels for flows less than 4500 cfs is to have flashboards or a cap. Otherwise water levels will drop to just above the dam crest in order to have the water flow through the power house. We do not know when FERC will rule on our rehearing request, but in the meantime we are preparing responses to the existing information request.

Regards,
Wayne

SUMMARY OF NOVEMBER 22, 2021 CONFERENCE CALL WITH U.S. FISH AND WILDLIFE SERVICE AND VIRGINIA DEPARTMENT OF WILDLIFE RESOURCES

Participants:

David Sutherland, USFWS

Scott Smith, VDWR

Alan Weaver, VDWR

Jessican Pica, USFWS

1. Participants discussed whether it would be preferable to have a separate agreement for fish passage if FERC does not grant a license to Scott's Mill. Scott's Mill is willing to move forward with fish passage if a grant can be obtained and FERC denies license issuance.
2. Settlement Agreement will provide for a minimum flow out of the headrace.
3. David Sutherland will provide case examples of projects that have installed the ¾-inch fish screens.
4. The minimum flow over the Scott's Mill Dam will have a 1-inch veil. It was agreed that because flow will be discharged into the main river, there really is not a bypassed reach. However, the flow over the spillway will be reevaluated to determine downstream habitat.
5. Flashboards could be installed on the left side of the river to provide attraction flow, if that is deemed necessary during the detailed design, This would replace one section of the cap.
6. Project will be run of river. However, the project is dependent upon what comes down from the upstream Reusens Project.
7. Scott's Mill will need to refile the 401 Water Quality Certification Application since the one year has expired and Scott's Mill is filing a new application.
8. Scott's Mill explained the refilling of the dam after construction. The upstream cofferdam will be removed and the headrace allowed to fill. Once full the horseshoe portion of the dam will be removed to the elevation proposed by Virginia Department of Historic Resources. This will not affect flows in the headrace. Once the cofferdams are removed, the project will begin operating and water levels will be maintained at the dam crest. The cap will then be added. Water levels will be drawn down below the crest for the safety of the workers. Siphon pipes will be used to provide water immediately downstream of the main dam.
9. The last turbine and headpond fishway will provide attraction flows for upstream migrants.
10. A PIT tagging study will be needed to confirm upstream and downstream passage. Agencies agreed to work closely with Scott's Mill on this.
11. Agencies will determine when upstream fish passage is needed based on American shad restoration efforts.

12. Ice is not a problem for the project. In a severe winter some ice could form, but over the past 30 years, ice has been minimal.
13. The USFWS proposed a time period of March through November. There was some discussion on the percentage of fish that might pass in any given month, but it was agreed that the agencies would make the call on the timing of operations.
14. The downstream fish passage flow is to be set at 5 percent of the turbine flow, but if a lower flow can provide the necessary passage efficiency, the agencies would agree to the lower flow. The CFD modeling will be done during the detailed design and may shed some light on the required minimum flows.
15. The recreation enhancements are to be included in the Settlement Agreement, but the headpond boat ramp may be excluded from the license and under a separate agreement with Amherst County or the Commonwealth of Virginia.

Sutherland, David <david_sutherland@fws.gov>

To: Wayne Dyok

Cc: Mark Fendig, Scott Smith, Pica, Jessica E, Tittler, Andrew

Wed, Dec 1, 2021 at 10:24 AM

OK, thanks to Jessica and Scott, please see the attached list of projects.

Hide original message

From: Sutherland, David

Sent: Wednesday, December 1, 2021 11:16 AM

To: Wayne Dyok <dyok@prodigy.net>

Cc: Mark Fendig <mfendig@aisva.net>; Scott Smith <scott.smith@dwr.virginia.gov>; Pica, Jessica E <jessica_pica@fws.gov>; Tittler, Andrew <Andrew.Tittler@sol.doi.gov>

Subject: RE: [EXTERNAL] Scott's Mill Settlement Agreement

Wayne, here is an example in the attached file of ¾" bar racks, and I am still looking for the recent list of projects with screening. David

ProjName	ProjNumber	State	Waterbody
Taftville		0 CT	Shetucket River
Indian River		12462 MA	Westfield River
Ashton		14634 MA	Blackstone River
Central Falls		3063 RI	Blackstone River
Rainbow Falls		2835 NY	Ausable River
Chittenden Falls		3273 NY	Kinderhook Creek
Colliersville		2788 NY	Susquehanna River
Upper Mechanicville		2934 NY	Hudson River
Green Island		13 NY	Hudson River
Stuyvesant Falls		2696 NY	Kinderhook Creek
Scotland		2662 CT	Shetucket River
Woronoco		2631 MA	Westfield River
Moosehead		5912 ME	Piscataquis River
Lowell		2790 NH	Merrimack River
Mine Falls		3442 NH	Nashua River
Millville Dam		2343 VA	Shenandoah River
Groveville		3511 NY	Fishkill Creek
Lakeport		6440 NH	Winnepesaukee River
Lochmere		3128 NH	Winnepesaukee River
Stephens Mills/River Bend		3760 NH	Winnepesaukee River
Clement		2966 NH	Winnepesaukee River
Franklin Falls		6950 NH	Winnepesaukee River
Jefferson Mills		15038 VA	Hardware River

Owner	Status
FirstLight	In place
Indian River Power Supply LLC	In place
New England Hydropower Company	In place soon
Gelardin/Bruner/Cott, Inc.	In place soon
NYSEG	In place
Gravity Renewables	In place soon
Goodyear Lake Hydro	In place soon
NYSEG	In place soon
Albany Engineering	In place soon
Albany Engineering	In place soon
FirstLight	In place
Swift River Hydro Operations	In place
Town of Dover-Foxcroft	In place soon
Central Rivers Power	In place soon
City of Nashua	In place soon
PE Hydro Generation LLC	In place soon
Lower Saranac Hydro	In place soon
Eagle Creek	In place
Eagle Creek	In place
Eagle Creek	In place
Eagle Creek	In place
Eagle Creek	In place
Let It Go LLC	In place soon

Comments

Blackstone that has 0.5" racks at an incline of 4.7 deg to protect eels
to be installed per Sect. 18 once new license is issued

License not issued, SA in place

angled screens with 1/4" hexagonal openings
angled screens with 1/4" hexagonal openings

overlays

not implemented yet but NMFS recommended 0.5" racks

inclined rack recommended, in initial design phase

inclined rack recommended, in initial design phase

see Service's May 24 2021 letter

prescribed, License not issued, settlement neg taking place (without threat of TTH)

overlays

working towards conditioning the exemption

Wayne Dyok <dyok@prodigy.net>

To:Dean Rodgers

Cc:Mark Fendig

Tue, Feb 1 at 1:38 PM

Hi Dean. Scott's Mill is getting ready to file a final license application to the Federal Energy Regulatory Commission. As you may recall we had filed a final exemption application in 2020 and in November 2021 FERC made a final determination that we must file a license application rather than exemption. We are in the process of converting the exemption application and plan to file in March.

We are continuing to pursue a boat ramp on the Amherst side of the headpond on a property currently owned by Liberty University. As we discussed, Scott's Mill desires to be exempt from liability issues. We are also looking for partners to operate the boat ramp. We would like to pursue this with you as the project moves forward. We are nearing completion of the settlement agreement with the USFWS, VDWR and VDEQ. In addition to fish passage, we have identified recreation facilities in both the application and settlement agreement. As we also discussed, they include a fishing pier downstream of the project, a portage around Scott's Mill and the boat ramp on LU's property. Once we get the settlement agreement finalized and application submitted, we would like to move forward with you expeditiously.

On another matter, we have not tracked the Reusen's license application process beyond the draft application stage. We appreciate that you are engaged in that process. Perhaps Reusens could participate in the development of the boat ramp in our headpond as it is not far downstream from their tailrace, as part of their recreation proposal. I understand their initial thought was that they had already met the recreation burdens of the project. We are also wondering how the reservoir fluctuation issue turned out. Perhaps we can chat about that at your convenience.

Lastly, if you have any documentation on how Amherst County can limit Scott's Mill's liability if it provides recreation facilities that would be appreciated.

I will be back in the area again in April and hope to meet with you then. (I am working with Mark in the area this week.)

Regards,
Wayne Dyok

Hide original message

On Thursday, July 15, 2021, 05:24:21 AM PDT, Dean Rodgers <dcr Rodgers@countyofamherst.com> wrote:

I'll text you when I arrive.

Dean C. Rodgers
(434) 534-2052
Sent from my iPhone

On Jul 14, 2021, at 9:09 PM, Wayne Dyok <dyok@prodigy.net> wrote:

Hi Dean. I am at Eagle Eyre and will be here at the "executive conference" room most of the day tomorrow. We will be ready for you whenever you swing by. You might want to call or text Mark or me (916 719-7022) so we can provide guidance on getting to the executive conference room.

Wayne

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Wayne Dyok

Cc: Mark Fendig, Thornton, James

Tue, Feb 22 at 2:15 PM

Hey Wayne,

We've got a draft from USFWS that Alan is going through now. Soon as he finishes, hopefully very soon, I'll look over his edits and then send it to our HQ for a pre-signing review. Once that's done, it goes back to USFWS for their final touches. I don't expect there will be much in the way of changes, so I'm not expecting this to take much longer.

You can reach Ken Hogan at Kenneth.Hogan@fws.gov. I'll give you another update once it's out of our shop and back to USFWS.

Scott

Hide original message

On Tue, Feb 22, 2022 at 4:52 PM Wayne Dyok <dyok@prodigy.net> wrote:

Hi Scott. We are getting close to wrapping up the revisions to the Scott's Mill license application and filing it with FERC. Can you provide an update on when we can expect to see a revised draft of the settlement agreement.

Perhaps you can also provide me with Ken Hogan's email address as well. He called me some time ago, but I neglected to request his email address. I could go through my phone records and perhaps find his phone number but I am sure you have his contact information at your disposal.

Regards,
Wayne

Smith, Scott <scott.smith@dwr.virginia.gov>

To: Wayne Dyok

Wed, Mar 9 at 2:18 PM

Wayne,

All of your points seem reasonable to me. The purposes of the veil over the spillway are to maintain habitat/water quality immediately below the dam, as well as to maintain habitat conditions on the left side of the river channel below the dam. I get your point about Reusens flow fluctuations making it difficult to maintain a constant level veil of water. My preference has always been to use the 1" veil as a placeholder and utilize adaptive management to determine spillway/bypass reach needs after the project becomes operational (and also after we see what the Reusens license looks like). My suggestion would be that we pursue this approach after everything is settled (construction and Reusens license), and use the 1" veil in the short term as a placeholder. Given that, a daily average seems reasonable to me, but we will see what the other agencies think. I will offer that in my comments on the draft.

I'm as confused as you regarding the bypass vs fishway vs downstream passageway flow terminology. I'm going to propose that we use the terms "Spillway flows", "Eelway flows", and "Intake Bypass Flows"; unless you have a better idea. It's frankly confusing as hell using "Bypass Flows" to mean multiple things. I'll propose making those terminology changes if that works, and if you've got a better idea of how to label things, please share.

I'll have to go over the refill procedures again, but at first glance I would agree with your statements. I'll see if I can clean that up some, and perhaps delete things that don't really need to be there.

The eelway dates are pretty solid, based on our observations at other projects. Essentially, they are moving upstream any time water temps are in excess of 10 C, or so. So Mar-Nov does make a lot of sense based upon when we see them moving. If we end up getting data that shows we don't need to operate for that entire time, then we can certainly modify the dates, but they certainly seem pretty spot on to me.

The sweeping velocity thing is also confusing to me. I'll see what I can do with that one. The main point is to have sweeping velocities exceed intake velocities, so that fish will go through the downstream bypass fishway. Since you are expecting intake velocities of 2 ft/sec, then any number greater than this for sweeping velocity seems reasonable to me. I'll see what I can work up here.

Agree with your statements about Reusens. I am really hoping we can convince FERC that peaking that project is a really bad thing. If we are successful, then that covers everything in the SA. If not, then your statements are exactly right. Also, I agree that coordinating operations of the 2 projects definitely would be ideal.

Finally, I'm good with your peak hour proposal at this project as well. I will see if I can write something into the SA that states we will work together to develop an operational plan to address this issue. That may hit some snags with FWS, and if you've got some suggested language for that, please send it my way.

Thanks for the comments. I'll see what I can address in this version of the draft and then we'll see how FWS likes them.

SS

Hide original message

On Mon, Mar 7, 2022 at 8:32 PM Wayne Dyok <dyok@prodigy.net> wrote:

Hi Scott. Thanks for sending the draft Settlement Agreement. I have discussed with Mark. For the most part it looks fine, but we do have a few thoughts/questions. They are generally in order as written in the draft SA.

First, we are okay with the one-inch veil over the main spillway dam. Since we are directing half the turbine flow into the main channel, Mark and I were trying to remember why we needed that veil. Is it for aesthetics, downstream water quality or habitat immediately downstream of the dam? Based on our calculations, the flow over the dam will be about 25-30 cfs with the one-inch veil. Mark and my major concerns relate to the notification procedure if we are below the one-inch level. The analysis that I just did and I can send to you is that the headpond reaches equilibrium very quickly. So if Reusens varies flow, say decreases flow, we could easily have a deviation before we have a chance to react. What we would like to do there is have a daily average veil of not less than one inch. That would be more manageable. We will be generating a lot of work for the project if that is a requirement. Otherwise we will need to discharge more water over the dam to ensure we do not violate the one-inch criteria. Keep in mind that we will have water level sensors and that is how we plan to maintain run of river conditions.

Second, I think there seems to be some confusion over the bypass reach and bypass flow. In my mind the bypass reach is the main river reach immediately downstream of the straight section of dam. We are looking for a one-inch veil over this section. The bypass flow is the flow that goes over the fishway downstream of the last turbine unit. This is the location where we should have 5 percent of the turbine flow. Our thought was 5 percent of the river flow up to the maximum capacity of the turbines (i.e., 225 cfs) based on the actual river flow. We can live with the current language and look to the CFD modeling to ensure we get the downstream migrating fish to use the bypass. We concur with the language later in the document that this number may be reduced if we can show a lesser flow works.

I think the impoundment refill protocol is confusing. When we first take out the cofferdams, we need to fill the area upstream of the powerplant. We can do that in a way that only 10 percent of the river flow is used for that. The volume we are talking about is not significant and that will fill quickly without affecting downstream flows. The second component of the refill protocol will be during cap construction on the main spillway. For safety reasons we will need to draw the headpond down about a foot below the existing dam crest during construction of the cap. All flow will be diverted through the powerhouse, but we can always have water discharged over the dam via temporary pipes if need be. Once the construction is completed we can slowly fill the headpond. All we need is 900 acre-feet (or 450 cfs for one day). We can fill over several days as necessary to ensure flow downstream doesn't change by more than 10 percent. During construction, if flow increases over 4500 cfs, we will need to stop construction work on the cap because the headpond will fill and the situation will become dangerous. Hence I think the entire section can be deleted as it is not a significant issue since we are not dewatering anything except the powerhouse construction area and then lowering the pool by about a foot to facilitate cap construction.

At one point we talked about the operation of the eel fishway as being less than March 1 to November 30. If eels are present during that entire time, then we will agree to it. However, if data shows that that can be reduced then perhaps we should add a sentence to that effect.

Another point of confusion to us is the sweeping velocities of 1.5 cfs one foot away from the trashracks. First we think this should be feet per second. I believe that given the intake dimensions, the average velocity at each intake will be around 2 feet per second (500 cfs and about 240 square feet of area). The CFD modeling will show velocities at the intake and velocities with distance from the intake. We want the downstream velocity component to be about 2 feet per second downstream at full capacity flow. So maybe we need something different here to describe what is needed for the fish.

We concur with the various studies and plans that will be needed and look forward to working closely with VDWR to ensure that we are successful in our fish passage efforts.

The 3/4 inch screen is a good fall back in the event our passage goals are not met. We can include in the design. Hopefully the screen will not be necessary because it could be a nightmare to clean, particularly during high flow events when there is significant debris in the river or during the fall when the river has a significant amount of leaves.

Perhaps our big concern is how Reusens operates their project. If they peak, because of our run-of-river operation, we will likewise be peaking too. We think this defeats the purpose of run of river. The two projects really need to be coordinated.

Lastly, we would like the opportunity to operate Scott's Mill during the high summer electrical demand periods as we have done for the last two years at the Cushaw Project. We have modified the license application to request 10 days of operation for two hours per day to maximize capacity values. We would need to conduct tests to see what fluctuation in flows is reasonable to maintain habitat quality downstream. We would propose to develop a plan for that. Again it will be for a maximum of two hours on a given day and for no more than 10 times in one year. We think that the downstream sees this type of fluctuation often as flows rise and fall during virtually every precipitation event. The key is not to fluctuate the downstream flows and water levels to the extent that they affect aquatic habitat.

Mark and I are available to discuss at your convenience. It would be great if we could get the agreement completed in the next month.

Regards,
Wayne

On Friday, March 4, 2022, 10:00:53 AM PST, Smith, Scott <scott.smith@dwr.virginia.gov> wrote:

Wayne,

Attached is the draft copy that has been through Dave Sutherland, Jessica Pica, and Alan Weaver. I haven't finished my run through yet, but should have that shortly. This is still in Draft form, but I don't anticipate much in the way of changes on our end. Once I get through it, I will send to our folks at HQ for their review (should they want to do that). Once they've had their crack at it, the doc goes back to USFWS for their final review. When I send to our HQ, I will recommend they send to DEQ for their review at the same time. If you have any comments on this version of the draft, just let the group know. I believe Jessica is out on maternity leave, so you may not get a response from her, but Ken Hogan should be handling this for them until she's back. Hope that covers everything, but let me know if you have questions.

SS

Wayne Dyok <dyok@prodigy.net>

To:Hogan, Kenneth J,Scott Smith

Thu, Mar 10 at 12:19 PM

Hi Ken. Scott provided me a copy of the draft settlement agreement last Friday. I provided a few thoughts and he sent me a great response last night. My sense is that we are in agreement on the issues, but need to clarify a few aspects of the SA. Scott appears to be on it.

We plan to file the application next week now that we finally have the dam stability analysis completed.

FERC wants the SA included so they do not waste review time and renote the project. I am trying to incorporate all aspects of the SA in the application and believe that it is now consistent with the current status of the SA. Hence I am pleading to get this wrapped up ASAP. Can we have a call next Wednesday or Thursday to make sure we can get the SA signed this month? I have surgery on Monday so expect to be unavailable the first two days of the week.

Wayne

Sent from my iPhone

Smith, Scott <scott.smith@dwr.virginia.gov>

To:Wayne Dyok

Tue, Mar 15 at 3:46 PM

Wayne,

Here's the most updated version of the SA, after I put in my comments. I'm sending you a clean version, since the earlier ones were pretty messy. Let me know if you have any questions or if you want to see the other version.

SS

Wayne Dyok <dyok@prodigy.net>

To:Hogan, Kenneth J

Cc:Scott Smith,Mark Fendig

Wed, Mar 16 at 9:36 AM

Hi Ken. Scott sent me a draft copy of the SA. I responded last night with a few typo edits and one suggested change re the veil. We are concerned about the operation of Reusens and having to notify everyone perhaps initially on a daily basis so we are asking for one small modification to the notifications, We can live with the rest of the SA and are anxious to get it wrapped up and signed. Our plan is to work closely with the USFWS and VDWR on executing the SA. I do not think we need a conference call as we are willing to sign the SA in its current form, hopefully with the one minor modification.

We are very close to filing the application. Hopefully I can do one last cross check to ensure consistency with this version of the SA. The last thing I needed was the final stability analysis which I will be getting today. If all goes well, we will file by the end of the week or on Monday.

Will you be at the NHA conference?

Regards,
Wayne

Hide original message

On Wednesday, March 16, 2022, 08:37:45 AM PDT, Hogan, Kenneth J <kenneth_hogan@fws.gov> wrote:

Hi Wayne,

I'm not sure why, but your email once again ended up in my junk folder. I'm looking at the SA today, and hope to provide a response to Scott by COB or early tomorrow. Once I complete my review, I'll have a better feeling on the need for a meeting.

Good luck with your Surgery if we don't meet before then.

Ken

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