

EDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 10809-045, -047-Michigan
Secord Hydroelectric Project
Project No. 10810-051, -053-Michigan
Smallwood Hydroelectric Project
Project No. 2785-098, -099-Michigan
Sanford Hydroelectric Project
Boyce Hydro Power, LLC

August 18, 2020

VIA ELECTRONIC MAIL

Mr. Lee Mueller
Boyce Hydro Power, LLC
lwmueller@boycehydrollc.com

Subject: Extension of Time Request for Endangered Species Act Consultation and
Outstanding Dam Safety Directives

Dear Mr. Mueller:

This letter concerns: (1) your request for an extension of time (EOT) filed August 12, 2020, to fulfill provisions of Commission staff's Letter Order issued July 30, 2020;¹ and (2) your non-compliance with two dam safety directives issued May 20, 2020 and June 4, 2020.²

EOT Request – Emergency Endangered Species Act Consultation

The Commission's July 30, 2020 Letter Order directed Boyce Hydro Power, LLC (Boyce Hydro) to immediately consult with Michigan Department of Natural Resources and U.S. Fish and Wildlife Service (FWS) (collectively, agencies) under section 7 of the

¹ Letter from CarLisa Linton, Director, Division of Hydropower Administration and Compliance, to Lee Mueller, Boyce Hydro.

² May 20, 2020 and June 4, 2020 Letters from Dave Capka, Director, Division of Dam Safety and Inspections, to Lee Mueller, Boyce Hydro.

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Endangered Species Act (ESA) to develop and implement mussel surveys at all three of its jurisdictional projects³ for the federally endangered snuffbox mussel (*Epioblasma triquetra*). Specifically, Boyce Hydro was directed to file documentation of initial consultation with the agencies within 10 days of the date of the letter (August 10, 2020); file the proposed survey design along with documentation of concurrence from the agencies within 25 days of the date of the letter (August 24, 2020); and following the Commission's determination on the proposed mussel survey plan, to begin implementing the approved plan within 10 days of the date of the plan's approval.

In its request, Boyce Hydro states that additional time is necessary because of Boyce Hydro's filing for protection in the U.S. Bankruptcy Court for the Eastern District of Michigan on July 31, 2020. The U.S. Bankruptcy Court issued an order on August 7, 2020 authorizing Boyce Hydro to use funds, budgeted with the approval of the Bankruptcy Trustee, for dam operations. This authorization includes professional fees to be incurred to fulfill license-related compliance obligations. Boyce Hydro states that it now intends to undertake the required survey.

We concur that the justification for your 10-day extension request is reasonable. Therefore, the request is granted and your documentation of initial ESA consultation is due **August 24, 2020**.

Failure to Complete Dam Safety Directives

By letter dated May 20, 2020, the Commission required you to perform a dam safety inspection of the Sanford, Secord, and Smallwood Dams. You filed inspection reports for the Smallwood and Secord Dams on June 30 and July 8, 2020, respectively. However, you have not filed an inspection report for the Sanford Dam. Further, supplemental dam safety reports are required for the Smallwood and Secord Dams by August 14 and August 20, 2020, respectively.⁴ The Smallwood and Secord Project reservoirs cannot be returned to normal operating levels until you file the above information and demonstrate that the dams are safe. Your failure to comply with the Division of Dam Safety and Inspections (D2SI) directives has resulted in a prolonged state of drawdown and the reservoirs cannot be refilled until compliance is achieved. The required mussel surveys are independent of the D2SI directives above, and can be done irrespective of whether the Smallwood and Secord impoundments are filled or in a

³ Secord (Project No. 10809), Smallwood (Project No. 10810), and Sanford (Project No. 2785) Hydroelectric Projects.

⁴ See Commission staff letters issued July 15 and July 21, 2020.

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drawdown condition. You must file the Sanford dam safety report and the supplemental dam safety reports for the Smallwood and Secord Projects **within three days** of the date of this letter.

Also, by Letter Order dated June 4, 2020, the D2SI's Chicago Regional Engineer directed Boyce Hydro to immediately remove significant amounts of debris that had accumulated at the Sanford Dam as a result of the May 19, 2020 failure of the upstream Edenville Dam. The letter required documentation of Boyce Hydro's efforts to remove debris at the Sanford Dam by June 8, 2020. To date, Boyce Hydro has not filed this required information with the Commission. You must file this documentation **within three days** of the date of this letter.

Section 31 Notification – Failure to Complete Dam Safety Directives

This letter constitutes notice under section 31 of the FPA that you are currently in non-compliance of Part 12 of the Commission's regulations for failure to submit/complete the above listed directives. This letter does not extend any deadlines other than deadline established in the July 30, 2020 letter regarding the mussel survey. Section 31 of the FPA provides the Commission authority to monitor and investigate compliance with terms and conditions of licenses and based on the Commission's findings, assess civil penalties for violations of licenses issued under Part I of the Act. Section 31 authorizes the Commission to assess civil penalties exceeding \$20,000 per day, per violation, for failure to comply with the terms and conditions of a license.⁵ Failure to comply with license requirements may lead to an enforcement proceeding and civil penalties under Section 31 of the FPA, or license revocation. Your efforts to proceed with all due diligence will be considered in any future Commission action on this matter.

The Commission strongly encourages electronic filing. Please file the requested information using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville,

⁵ See Civil Monetary Penalty Inflation Adjustment, 18 C.F.R. § 385.1602(b) (2019).

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Maryland 20852. The first page of any filing should include docket numbers **P-2785-098 and -099; P-10809-045 and -047; and P-10810-051 and -053.**

Thank you for your cooperation. If you have any questions regarding this matter, please contact Kim Nguyen at (202) 502-6105 or kim.nguyen@ferc.gov.

Sincerely,

CarLisa Linton
Director
Division of Hydropower Administration
and Compliance

cc: VIA ELECTRONIC MAIL

Scott Hicks
Field Supervisor
U.S. Fish and Wildlife Service
Scott_Hicks@fws.gov

Jessica Mistak
Supervisor, Habitat Management Unit
Michigan Department of Natural Resources
MistakJ@michigan.gov

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