

Via Email

Robert Kubit, Massachusetts Department of Environmental Protection

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RE: Bear Swamp Power Company, LLC

FERC Project No. 2669-085

Dear Mr. Kubit:

This follows up on your April 11, 2019 email regarding Notice of 401 Water Quality Certification Application of Bear Swamp Power Company LLC (BSPC). Deerfield River Watershed Chapter of Trout Unlimited (DRWTU) appreciates the opportunity to comment on the application consistent with its ongoing participation and intervention in the licensing process of the Bear Swamp Pumped Storage Development and Fife Brook Development on the Deerfield River in Florida, Massachusetts, FERC Project No. 2669-085 (Bear Swamp Development).

DRWTU remains a committed partner of the many federal, state and private stakeholders in this FERC relicensing process that advocate for protection of the health of the Deerfield River against the recurrent and sustained damage resulting from the operation of the Bear Swamp Development. The stakeholders look to the 401 Water Quality Certification Process as an essential element of regulatory oversight of the Project's discharge to waters of the United States and the Commonwealth of Massachusetts.

DRWTU's mission is to advocate for the protection and enhancement of the tributaries and main stem of the Deerfield River as unique cold water fisheries. DRWTU submits that it is unacceptable, both as a matter of law and as a matter of fundamental environmental protection, to allow the Bear Swamp Development to continue operations destructive to the chances for wild trout reproduction success in the main stem of the river extending from the Bear Swamp Development to Great River installation No. 4 some 17 miles downstream.

DRWTU has moved to intervene in the FERC licensing proceeding and adopts by reference the substance of the comments submitted in its motion. A copy of the motion is transmitted electronically with this email.

1. *DRWTU Spawning Study:* DRWTU conducted in 2017-2018 a spawning study in tributaries and the main stem of the Deerfield River—the very first of its kind in Massachusetts. The novelty and creativity of DRWTU's privately funded and largely volunteer effort received national recognition when the Chapter received the prestigious Trout Unlimited Golden Trout Award.
2. *Study Results:* DRWTU study established not only that wild trout exist in the main stem of the Deerfield, but also that Bear Swamp Project hydropeaking operations are adversely affecting the natural spawning cycles of wild Brown, Rainbow and Brook trout.
3. *Need for further study:* Notwithstanding the results of the DRWTU study, BSPC has not of its own accord or by direction from FERC undertaken necessary study to identify the impacts of its operations, and especially its hydropeaking practices, on wild trout

spawning and survival of fry and young of year trout. Such study as BSPC has performed at FERC's direction has been conducted at inappropriate locations for gathering meaningful and helpful data for evaluating project impacts.

4. *Evaluation of alternative operations:* DRWTU, based on its study, other observation and anecdotal evidence, submits that BSPC as part of its 401 WQC Application must provide compelling evidence that it intends to perform and will conduct its operations in such manner as minimizes adverse impact on the Commonwealth's extraordinary cold water fishery resource and protects to the extent reasonably possible the survival and recovery of the wild trout population. Alternative practices may mean loss of revenues for BSPC, but the company must present its calculus purporting to show the justification for profits predominating over sustaining the recovering wild trout population of the Deerfield.
5. *Instream Flow Incremental Study (IFIM):* DRWTU concurs with the views of other stakeholders and with the suggested approach of Secretary of Energy and Environmental Affairs Mathew Beaton in his April 26, 2018 letter to FERC Secretary Kimberly D. Bose, that comprehensive study of the impacts of the Bear Swamp Project is essential to the licensing process. Only an IFIM, appropriately conducted, can yield the information necessary to determine current impacts on wild trout populations and what measures will mitigate impacts to the fullest extent practicable.
6. *How IFIM Can Supplement the DRWTU Study:* Despite DRWTU's impressive study results, immediately significant and important questions remain. The 401 Water Certification process must require BSPC to resolve these questions and related issues. As the Massachusetts Division of Fish and Wildlife (an Intervenor in the FERC re-licensing proceedings) indicates in its March 29, 2019 letter to FERC, an IFIM study will yield important data. Of particular interest are (i) appropriately conducted assessment of winter minimum flows to maintain adequate water coverage over redds; (ii) establishment of appropriate ramping rates; and (iii) determination of other flow adjustments to protect both trout eggs and post emergent fry and young of year fish. While there are some grounds to infer that a minimum flow of 350 cfs will suffice to keep redds adequately covered (BWSC desktop analysis, on the other hand, indicates that at certain transects 328 cfs might suffice), there is shared uncertainty on this critical point.
7. *Encouraging wild trout populations:* DRWTU's study revealed that trout eggs in redds are being left uncovered by hydropeaking operations and releasing inadequate flow of 125 cfs during the period from November 1 to April 15. DRWTU believes a release rate of 350 cfs during this spawning season will protect the trout eggs by keeping them water covered and protected from freezing and predation. An IFIM can substantiate the extent of adverse impact from current operations and show what is needed to protect the wild trout population.
8. *An IFIM can provide critical information:* DRWTU believes that with modest changes to the Bear Swamp Project's operations, and likely at little expense, this wild trout fishery will not only be enhanced, but will also flourish. The Deerfield River can become a robust wild trout ONLY fishery. The Deerfield could and should be the pride of the Commonwealth as a wild trout fishery.

9. *Timing of IFIM:* Licensing of the Bear Swamp Project is out of synch with the Great River Project licensing. Great River's license comes up for renewal in 2036. Given the wide recognition of the primacy of IFIMs for understanding impacts of flow on riverine systems, future stakeholders will look to FERC to require IFIMs to study the impact of the many Great River Project locations on the Deerfield River. DRWTU submits that the instant 401 WQC Application should evoke requirements for IFIMs to be performed now and in the future to synchronize study with the Great River Project license renewal. The Commonwealth should look at the entirety of the watershed when the Great River license is up for renewal, so that proper water management can be attained, without the competing power companies pointing fingers at one another for adverse ecological impact on the watershed. Ordering the IFIM be re-done in 17 years is appropriate, reasonable and well founded in science.

If the Deerfield does become a wild trout only fishery, it will have significant economic benefits. Anglers, particularly fly fishing anglers, travel great distances and spend considerable sums of money to fish rivers and streams with wild fish. Although stocked rivers do, of course, support fishing, serious trout anglers enthusiastically seek wild fish, especially in rivers as beautiful as the Deerfield. This will benefit many businesses in the area, including hospitality, professional guides, fly shops, and other retail businesses. The Upper Deerfield River can become an iconic wild trout fishery.

DRWTU attaches its Motion to Intervene and letter to FERC dated March 29, 2019, which comments are adopted and included in this submission by reference.

We look forward to working with your Agency to address the 401 WQC Application to make sure the FERC licensing process respects the Commonwealth's water quality standards and promotes their goals and values to make the Deerfield River the best it can be.

Respectfully submitted,
Deerfield River Watershed Chapter of Trout Unlimited
By its attorney,

Dated: April 17, 2019


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