UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Bear Swamp Power Company, LLC) Project No. 2669-085

COMMENTS OF INTERVENOR

DEERFIELD RIVER WATERSHED CHAPTER of TROUT UNLIMITED

on

OCTOBER 2019 DRAFT ENVIRONMENTAL ASSESSMENT

for

BEAR SWAMP PROJECT

in

BERKSHIRE AND FRANKLIN COUNTIES, MASSACHUSETTS

In response to the October 31, 2019 NOTICE OF AVAILABILITY OF DRAFT ENVIRONMENTAL ASSESSMENT for the Bear Swamp Project, intervenor Deerfield Watershed Chapter of Trout Unlimited (DRWTU) submits the following comments.

Ramping Rates

DRWTU concurs with FERC Staff’s recommendation set forth at pages 295 through 296 of the draft Environmental Assessment (EA) regarding ramping rates. Article 4XX Sub-paragraph (5) effectively requires one hour ramping up when increasing generation or whitewater flows from 125 cfs. Sub-paragraph (6) expressly requires ramping down of “generation/white water flow release over a one hour period of time from March 15 through June 30.” DRWTU submits that these ramping rates will enhance public safety and foster emerging trout fry and macroinvertebrates in aquatic habitat downstream of the Fife Brook development.

Whitewater Flow Releases

Draft Article 4XX Whitewater Flow Releases appearing on draft EA page 303 provides for whitewater flow releases of 800 cfs beginning at 10:00 a.m. on at lest 106 days from April 1
through October 1. DRWTU supports the requirement for whitewater flow releases to
commence at 10:00 a.m. consistently as it will promote public safety and some degree of
predictability surrounding whitewater release impacts in the Deerfield River, especially in the
areas immediately below the Fife Brook dam.

DRWTU must point out that the water temperature discussion at draft EA, pages 250
through 251, does not comport with common sense. The issue is not whether there is a natural
phenomenon of higher water temperatures when air and sun heat the Deerfield River water. Of
course they do—it’s a matter of simple physics. The issue is whether bottom release of colder
water from the Fife Brook dam ameliorates conditions for temperature sensitive trout and other
river dependent species downstream of the release. Of course it does. It would be nonsensical to
suggest otherwise.

DRWTU disagrees with the 800 cfs flow regime for whitewater recreation, because it
unnecessarily affects river stability for flora and fauna for the sake of providing marginally
incremental thrill experiences. Unfortunately, it appears that the release of 800 cfs on a
“voluntary basis” by Bear Swamp Power Company, LLC (BSPC) has created, in and among
commercial and private interests recreating downstream of the Fife Brook dam, an attitude of
entitlement to flows 100 cfs above the base requirement of 700 cfs. DRWTU does not recognize
the study relied upon to support the higher flow rate as scientifically valid or even anecdotally
reliable.

Removal of Land from Conservation Protection

“BSPC is not proposing to renew the conservation easement for 1,256 acres of land that
is located near the upper reservoir and Fife Brook impoundment, 50 acres of which is located
outside the project boundary. BSPC is also proposing to remove 161.77 acres of land from the project boundary that are part of the current conservation easement.” Draft EA at p. 273.

DRWTU stands with Massachusetts Division of Fish and Wildlife (DFW) and the other stakeholders identified in the draft EA and comments in opposing releasing lands from conservation restrictions. DRWTU defers to the thoughtful and persuasive arguments offered by others because, for all practical purposes, the reasons these lands were protected under FERC’s April 4, 1997 Order are as valid today as they were then. Hydroelectric generation on the Deerfield River, from which BSPC profits so substantially, has, does and will come with a massive footprint of environmental cost. The draft EA’s rationale for allowing BSPC to remove lands from conservation restrictions simply does not include the burdens on enjoyment of the natural world necessarily implicit in calculus of socio-economic benefit/cost from Bear Swamp Project and Fife Brook dam generation.

No one can contend that environmental harm to the entire watershed from the multiple generating stations on the Deerfield River has somehow reduced or become less significant in the past two decades. Rather, the contrary is established by discovery of previously unknown ecological phenomena, such as partially successful wild trout reproduction being stymied by hydropoeking and insufficient minimum flow. FERC needs to require BSPC to carry stewardship responsibility consistent with the enormous benefits it gains from its radical impact on the Deerfield River and its environs.

**Minimum Flow Requirement**

Sub-paragraph (4) of Draft Article 4XX, *Project Operation*, at draft EA page 295, states that the licensee must “release a continuous flow of 125 cfs from the Fife Brook Dam into the Deerfield River as measured below the dam ....” DRWTU maintains its position that 125 cfs
does not protect spawning sufficiently to support, maintain and enhance the Deerfield River’s wild trout fishery in the reach of the Deerfield River below Fife Brook dam.

DRWTU joins United States Department of the Interior, United States Fish and Wildlife Service, DFW, Connecticut River Conservancy (CRC) and Deerfield River Guides Association advocating for a license requirement that the Bear Swamp Development release a continuous minimum flow of 350 cfs from November 1 through April 15.

The bases for requiring this flow regime have been set forth in prior comments of the stakeholders regarding, among other things, protection of wild trout reproduction and macroinvertebrate support.

The draft EA is fundamentally flawed, because, among other reasons, FERC staff failed to require an Instream Flow Incremental Method (IFIM) analysis of areas of known trout spawning activity downstream of the Fife Brook dam. The instream flow analysis (IFA) BSPC performed at FERC staff direction in the spring and summer of 2016 provides data upon which FERC staff rely extensively in attempting to establish that impacts to trout redds during spawning season and fry emergence are acceptable.

Use of spring and summertime data to assess autumn and winter impacts has its own problems. But the analytical shortcomings go much further than that.

FERC staff lump together data from transects in downstream reaches, (see draft EA at page 71, fn. 61, and pages 71 through 73) of the Fife Brook dam gathered during the IFA. Aggregation of lousy data cannot lead to valid conclusions. The draft EA unsuccessfully tries to make the troublesome problems of dewatered redds and dead eggs go away. DRWTU provided BSPC and FERC staff the results of the studies performed specifically to identify redd locations and impacts of minimum water flow (125 cfs) and other release rates on spawning activity.
The draft EA mentions DRWTU’s work, but for no substantiated reason concludes that data from remote locations supersedes firsthand observation of the impact of 125 cfs in dewatering redds and killing trout eggs. The data cannot support the draft EA’s analysis, much of which attempts to draw conclusions from invalid inferences from the abused data sets.

It is particularly troubling that the draft EA subsumes the blind eye approach of BSPC of failing to acknowledge the known location of redds as the most suitable places to take measurements of river width and depth at various flow rates. More specifically, DRWTU demonstrated to BSPC in studies submitted to FERC where to look for redds. In fact, BSPC representatives accompanied DRWTU and DFW representatives in late October 2018 to the most significant redd location discovered by DRWTU—the end of the so-called “Long Pool”—as documented in DRWTU study reports.

BSPC personnel acknowledged de-watering of redds in this area at 125 cfs, and, based on their own firsthand observation witnessed how 400 cfs covered the otherwise dewatered redds. (A BSPC representative suggested constructing weirs or similar contrivances to re-direct water from the main channel to the side channel heavily used for spawning where 125 cfs was dewatering redds. The DFW representative dismissed this sort of in-river artifice or other Rube Goldberg contraption).

In sum, despite knowing exactly where to look and measure to document flow regime impact on redds, BSPC chose to advance data from other locations. Consequently, and inevitably, the draft EA looks like an intentionally ginned up distraction meant to mislead.

“As [previously] discussed, a flow of 350 cfs would enhance depth suitability for all life stages of rainbow trout and brown trout compared to a minimum flow of 125 cfs.” Draft EA at 257.
DRWTU agrees.

DRWTU cannot agree with the draft EA’s data inference that the native species brook trout would be most affected by a minimum flow of 350 cfs due to a decrease in suitable velocity habitat. *See id.* at 257-258. The IFA and draft EA inferences do not support the conclusion that 350 cfs would be bad for brook trout.

From invalid inferences, FERC staff turns to the fanciful:

“Over time, the trout population in the Deerfield River *could shift* to more non-native species as there would be more suitable habitat for brown trout and rainbow trout than brook trout. Reducing the abundance of brook trout *could negatively affect* fishing, as anglers *would have less opportunity* to catch native trout species.”

Draft EA at 258 (emphasis supplied). *See also id.* at p. 111-112. Italics highlight the silliness of the fishing fable.

Putting to one side the fact that there is no evidence that anglers seeking a wild trout fishery would be disappointed to catch natively reproduced brown trout and rainbow trout instead of brook trout, the draft EA’s own language reveals the arbitrary and capricious drawing of conclusions in the absence, or in contradiction, of DRWTU-supplied data available to BSPC and FERC staff. Moreover, from the angling perspective, it is worth noting that the draft EA at page 49 states “Adult brook trout reach a total maximum adult length of 6 to 8 inches in the wild and seldom live more than three growing seasons.”

Most tellingly, the simple fact that brook trout do not spawn in the main stem of the Deerfield River (or even live there unless washed out of tributaries in high water events like
storms), reveals just how arbitrary and capricious the draft EA’s analysis of 350 cfs minimum flow is.

FERC staff at page 209 of the draft EA recites: “However, project economics is only one of many public interest factors the Commission considers in determining whether, and under what conditions, to issue a license.” DRWTU necessarily agrees. Valuing and weighing sometimes competing interests require valid presentation of information to FERC in license applications. Here, DRWTU submits, BSPC has been less than candid, thus impairing FERC staff’s analysis of the meaning and importance of the emerging wild trout fishery so treasured by anglers in the Deerfield River.

BSPC has provided what is at best a ham handed fish assemblage study, an ill timed and wrongly located search for redds themselves, and improperly located width and depth measurements under varying flow regimes. BSPC has tried to sell the Deerfield River trout population as a put and take angling experience, predominated by fish stocking of nonnative brown trout and rainbow trout.

DRWTU has established otherwise, and more recent data from as yet to be compiled electroshocking and tagging surveys indicate that a wild brown trout fishery can be successful in the upper Deerfield River. There is ample water available to provide for 350 cfs from November 1 through April 15 in order to keep redds watered. It is, after all, BSPC’s very own hydropoaking operations that cause trout populations to spawn in areas that 125 cfs cannot sustain.

Increasing winter flows creates better flow conditions during emergence periods, and, if sustained and managed properly, will undoubtedly result in dramatic increases in the wild brown trout population. This will have economic benefits to the region by increasing anglers paying for
guides and otherwise contributing to the local economy. Fly anglers prefer wild trout experiences. With modest adjustments, and minimal economic impact on a multi-million dollar operation, license conditions should require 350 cfs November 1 to April 15. There is ample water to do so.

FERC staff opines there would be an annual levelized cost of $170,719 to require 350 cfs minimum flow from November 1 to April 15. “Because the benefits of a 350 cfs minimum flow would be relatively minor for trout species compared with the existing 125 cfs minimum flow, we conclude that the benefits of the measure do not outweigh the costs, and therefore do not recommend a 350 cfs minimum flow.”

In other words, protecting and encouraging the spawning of a wild trout population in the public resource of the Deerfield River is not worthy of an $170,719 annual levelized cost to a power company with revenues over $30 Million derived from structures and activities that impede the Deerfield River and alter its natural course. And this revenue stream, likely to increase substantially in coming years, is generated in significant part by BSPC not generating electricity but rather holding water in reserve in the upper reservoir and having the capacity to generate. The draft EA analysis does not explain just how insignificant an annual levelized cost of $170,719 is in the context of a revenue stream derived from doing nothing but having capacity in reserve.

FERC staff’s analysis proceeds in the context of a licensing process that will yield private rights to exploit a precious public resource for decades. The bargain basement sale of a natural and wild trout fishery is an abuse of the environmental impact study and licensing process.

DRWTU submits that the Deerfield River deserves considerably more weight on its side of the decision making scale.
CONCLUSION

Intervenor DRWTU respectfully requests FERC receive these comments and respond accordingly in drafting of and decision making on the final Environmental Assessment and License Conditions.

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

Dated: December 14, 2019

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CERTIFICATE OF SERVICE

I, Christopher B. Myhrum, hereby certify that I have caused the foregoing to be served on December 14, 2019 by electronic mail or first class United States mail upon each person with a valid email or postal address appearing on the official service list in this proceeding as of this date.

Christopher B. Myhrum