



POWER NEW YORK

225 GREENFIELD PARKWAY, SUITE 201 • LIVERPOOL, NY 13088
PHONE: (315) 413-2700 • FAX: (315) 461-8577

April 11, 2000

Dear Settlement Participant:

Enclosed is your copy of the final version of the Upper Hudson/Sacandaga River Settlement Offer filed with FERC today. In addition, in compliance with our December 7, 1999 agreement, enclosed is a copy of the E.J. West amendment application executed by the Hudson River Black River Regulating District and Erie Boulevard Hydropower (Erie). This amendment application was concurrently filed with the Commission under separate cover.

A few corrections were made in the enclosed Settlement Offer prior to filing it with FERC. The only important changes made in this regard are as follows:

- pp. 1 - 2 (Section 1.0): the list of Parties was shortened by removal of names of those who did not provide signature pages (Finch, Pruyn & Co., Inc.; Frank Wozniak; National Audubon Society NYS).
- p. 72: (Section 6.5.1): the description of partial pneumatic flashboards at Sherman Island was made consistent with the 1991 Application for New License.
- pp. 82 - 83 (Section 8.3.1): the third paragraph in Section 8.3.1 was removed per agreement with Saratoga and Fulton Counties.
- Appendix D: Track changes in the former copy were removed and the title to Table D1 was added at the top of page D-15
- Appendix E was revamped to include only the Lookup Tables and a repeat of Table D1 per agreement with Saratoga and Fulton Counties.

In addition, Betty Lou Bailey supplied a number of useful corrections to typographical errors and syntax. These were adopted wherever possible.

If you have any questions regarding these corrections, please do not hesitate to contact either Andy Sims or me. To avoid confusion and inadvertently referencing the superseded signature copy of this Settlement Offer that you were sent on March 8, 2000, it is recommended that you either discard the prior copy or conspicuously mark it SUPERCEDED.

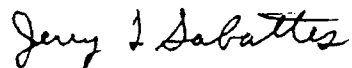
The attached Settlement Offer transmittal letter also states: "This Settlement Offer will also be submitted to the NYSDEC with a request that the Administrative Law Judge in the NYSDEC's administrative hearing remand the matter to NYSDEC Staff for 401 water quality certificate issuance consistent herewith." By receipt of this transmittal the NYSDEC is requested to follow up with the ALJ accordingly and to

April 11, 2000
Page 2 of 2

proceed with the issuance of the 401's for our projects consistent with the enclosed Settlement Offer.

It indeed is a pleasure, at long last, to distribute this final Settlement Offer to all settlement participants. Thank you for your participation and cooperation in achieving this monumental task.

Sincerely,

A handwritten signature in cursive script that reads "Jerry L. Sabattis".

Jerry L. Sabattis

Encs

xc: Janet Audunson
Sam Hirschey
A. E. Sims
T. J. Sullivan

**UPPER HUDSON/SACANDAGA
SETTLEMENT AGREEMENT**

**E. J. West Project, FERC No. 2318
Stewarts Bridge Project, FERC No. 2047
Hudson River Project, FERC No. 2482
(Spier Falls and Sherman Island Developments)
Feeder Dam Project, FERC No. 2554**

List of Signatories

- Adirondack Boardsailing Club Inc. (Dick Blackmer)
- Adirondack Council (Bernard Melewski)
- Adirondack Mountain Club (Betty Lou Bailey)
- Adirondack Park Agency (Daniel Fitts)
- Adirondack River Outfitters, Inc. (Gary Staab)
- American Rivers (Andrew Fahlurd)
- American Whitewater (Pete Skinner)
- Association for the Protection of the Adirondacks (David Gibson)
- Erie Boulevard Hydropower, L.P. (Jerry Sabattis)
- Feeder Canal Alliance (Christopher Reed)
- Fulton County Board of Supervisors (Jim Mraz – 2 copies)
- Glens Falls Chapter of the Adirondack Mountain Club (Jacqueline Bave)
- Great Sacandaga Lake Association (Willard Roth)
- Great Sacandaga Lake Fisheries Federation, Inc. (Jack Smith)
- Great Sacandaga Lake Marinas (Walt Ryan)
- Hudson River/Black River Regulating District (Thomas Brewer)
- Hudson River Rafting Co., Inc. (Patrick Cunningham)
- International Paper (Thomas Uncher)
- National Park Service (Kevin Mendik)
- New York Rivers United (Bruce Carpenter)
- New York State Conservation Council (Henry Cosselman)
- New York State Department of Environmental Conservation (Bill Little – 6 copies including NYSDEC original and ALJ original)
- Niagara Mohawk Power Corporation (Michael Murphy)
- Sacandaga Outdoor Center (John Duncan)
- Saratoga County Board of Supervisors (Jean Raymond – 3 copies)
- Town of Hadley (Tom Mason)
- Trout Unlimited (George Schmidt)
- U.S. Fish and Wildlife Service (Steve Patch)
- W.I.L.D.W.A.T.E.R.S (Doug Azert)



POWER NEW YORK

225 GREENFIELD PARKWAY, SUITE 201 • LIVERPOOL, NY 13088
PHONE: (315) 413-2700 • FAX: (315) 461-8577

April 11, 2000

Hon. David Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

**Re: New License Applications For
Erie Boulevard Hydropower, L.P.'s
E.J. West Project No. 2318,
Stewart's Bridge Project No. 2047 and
Hudson River Project No. 2482; and
Feeder Dam Project No. 2554;
Collectively the "Upper Hudson/Sacandaga Projects")
Filing of Settlement Offer and This Separate Explanatory Statement**

Dear Secretary Boergers:

Pursuant to 18 CFR §385.602, enclosed for filing please find an original and eight (8) copies of a document entitled Upper Hudson/Sacandaga River Offer of Settlement (Settlement Offer) that was recently executed by, inter alia, Erie Boulevard Hydropower, LP (Erie), the New York State Department of Environmental Conservation (NYSDEC), the United States Fish and Wildlife Service (USF&WS), the Adirondack Park Agency (APA), the Hudson River-Black River Regulating District (HRBRD), Saratoga and Fulton Counties, New York Rivers United (NYRU) and several other governmental agencies (GA's) and non-governmental organizations (NGO's) as regards the relicensing of the above-referenced hydroelectric projects (hereinafter collectively referred to as the "Upper Hudson/Sacandaga Projects").

E.J. West Project No. 2318, Hudson River Project No. 2482 and Feeder Dam Project No. 2554 are "Class of 1993" projects for which new licenses have yet to issue. Stewarts Bridge Project No. 2047 has an initial license expiring on June 30, 2000. As regards the Upper Hudson/Sacandaga Projects, the Settlement Offer contains a number of resource protection, mitigation and enhancement measures which differ from the measures proposed by the license applicant in the text of the respective new license applications. To the extent there is any inconsistency between any of the pending relicensing applications and the Settlement Offer, the Settlement Offer should govern¹.

¹ In addition, the proposed pneumatic flashboard enhancement in the application for Project No. 2482 that Niagara Mohawk withdrew from consideration via a letter dated May 31, 1995 has been reinstated per Settlement Offer subsection 6.5. The pneumatic flashboard scheme proposed for the entire spillway section of the Feeder Dam Project is being modified per Settlement Offer subsection 7.5 of the Settlement Offer.

A separate Explanatory Statement is required to accompany Settlement Offer submittals by 18 CFR §385.602(c)(ii). This transmittal letter should be considered that Explanatory Statement as the contents hereof assist in documenting and placing into perspective the fact and effect of the Settlement Offer's execution.

Pursuant to 18 CFR §385.602(f), any comments on this Settlement Offer will be due on May 2, 2000, twenty (20) days from the filing date hereof. Any reply comment will be due by May 12, 2000.

EXPLANATORY STATEMENT

I. INTRODUCTION

This Settlement Offer sets forth the terms and conditions on which the signatories have agreed should be included in the new licenses for the Upper Hudson/Sacandaga Projects²

The enclosed Settlement Offer includes the following significant features:

- Section 1 covers a number of ancillary points and considerations pertaining to the Settlement Offer including a description (subsection 1.2) of what provisions of the Settlement Offer are intended to be included in the ensuing FERC licenses as well as what (see Table 1.2-1) sections are to be omitted from new licenses;
- Subsection 1.8 addresses the agreement for Erie and the Hudson River Black River Regulating District (the District) to file an amendment application for the E.J. West Project enabling the District to become the licensee for the Great Sacandaga Lake and its associated facilities while Erie remains the intended new licensee for the E.J. West generating facilities. This amendment application has been executed by Erie and the District and is being concurrently filed with the Commission under separate cover.
- Section 2 covers a number of general agreements among the parties which are common to the respective new licenses affected by the Settlement Offer.
- Sections 3, 4, 5, 6 and 7 cover project specific protection, mitigation and/or enhancement measures (PM&E) for the Great Sacandaga Lake, E.J. West, Stewarts Bridge, Hudson River and Feeder Dam Projects, respectively.
- Section 8 addresses the inception of four resource enhancement funds and formation of advisory councils intended to administer the respective funds.

² The original licensee and the original new license applicant for Project Nos. 2047, 2318 and 2482 was Niagara Mohawk Power Corporation whereas the original project licensee and the original new license applicant for Feeder Dam Project was Moreau Manufacturing Company. Pursuant to Commission Order Approving Transfers of License, Partial Transfer of License, and Substitution of Applicants dated July 26, 1999, these respective licenses and pending new license applications were transferred to Erie.

- Appendix A provides a summary of the background settlement process leading to the Settlement Offer as well as a brief description of the projects and discussion of the purpose and justification for the PM&E measures proposed in the Settlement Offer.
- Appendix B provides the statutory understanding of the parties.
- Appendix C provides (for reference) the list of studies (filed with the Commission) which provide scientific information pertaining to the PM&E measures agreed upon in the Settlement Offer.
- Appendix D provides a summary of the HEC5P computer modeling results which pertain to the operating scenarios which are inherent in the provisions set forth in Sections 3 through 7.
- Appendix E provides, for reference, a repeat of Appendix D, Table D1 coupled with "look up tables" enabling readers to look up specific target elevations pertaining to the level curves described in Section 3 of the Settlement Offer.
- Appendix F provides for agreed upon terms to be tied to future ownership of existing commercially operated non-project whitewater facilities in the vicinity of the Stewarts Bridge Project.

II. SIGNATORIES

The Commission's regulations [18 CFR §385.602(b)] indicate that a Settlement Offer may be made by any participant in a proceeding. This Settlement Offer has been executed by Erie and the various other GA or NGO entities listed in Section 1.0 of the enclosed Settlement Offer. All of these entities have participated in one way or another in settlement discussions. These discussions were initiated by the NYSDEC as an outgrowth of administrative litigation before the NYSDEC in the context of the NYSDEC's denial of Niagara Mohawk and Moreau requests for 401 water quality certificates for Project Nos. 2318, 2482 and 2554.

The New York Power Authority (NYPA) intervened in the administrative litigation pertaining to the NYSDEC's denial of Niagara Mohawk requests for 401 water quality certificates for Project Nos. 2318, 2482 and several other hydroelectric projects transferred to Erie, however, NYPA is not party to the FERC relicensing proceedings for these projects. Therefore, NYPA did not sign the Settlement Offer, but instead issued a letter (appended to the enclosed Settlement Offer) which indicates that NYPA does not object to this Settlement Offer.

By agreement, Erie is submitting the Settlement Offer to the Commission while NYSDEC Staff is submitting a duplicate original to the NYSDEC ALJ in order to resolve the administrative litigation involving the 401 water quality certificate denials that are pending before the NYSDEC as regards the E.J. West Project No. 2318, the Hudson River Project No. 2482 and the Feeder Dam Project No. 2554. NYSDEC issuance of 401 water quality certificates are expected within the next few months for each of the Upper Hudson/Sacandaga Projects. The NYSDEC-issued 401 water quality certificates will reflect the Settlement Offer's resolution of matters of interest or concern.

III. CONCLUSION

Give-and-take was inherent in negotiation and execution of the enclosed comprehensive Settlement Offer with the sundry other parties that are either parties to this FERC relicensing docket and/or the 401 water quality certification proceeding ongoing before the NYSDEC, or are state or federal resource agencies.

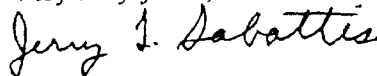
Erie is aware that the Commission strongly supports settlements and, accordingly, it has joined with others in executing a Settlement Offer in an attempt to best respond to resource concerns, while managing the ultimate fate of these relicensing proceeding in a manner acceptable to the interested stakeholders, signators and the Commission. Erie believe that the Settlement Offer offers just such an opportunity.

Successful negotiation of this Settlement Offer will also yield the ancillary benefit of facilitating NYSDEC's issuance of 401 water quality certificates, thus allowing positive FERC action, on a river basin, on three pending "Class of '93" relicensing dockets, as well as expediting and facilitating the pending relicensing of Stewarts Bridge Project No. 2047.

This Settlement Offer will also be submitted to the NYSDEC with a request that the Administrative Law Judge in the NYSDEC's administrative hearing remand the matter to NYSDEC Staff for 401 water quality certificate issuance consistent herewith. Based on past experience as regards Salmon River Project No. 11408, Beaver River Project No. 2645, Black River Project No. 2569/Beebe Island Project No. 2538 and the Raquette River Projects, 401 water quality certificates comporting to the substantive resolution of resource concerns addressed in the Settlement Offer are expected to issue within the next few months.

If there are any questions pertaining to this submittal or additional copies of same are requested, please call the undersigned at (315) 413-2787.

Very truly yours,



Jerry L. Sabattis
Hydro Licensing Coordinator

Enclosures: Settlement Offer
Attached Service List
xc w/Encl: J. M. Robinson
S. S. Hirschey
W. J. Madden
Service List
xc w/o Encl: Settlement Offer Signatories³

³ Not all signatories to the Settlement Offer (see Section 1.0 listing in the enclosed Settlement Offer) are on FERC's official Service List. Therefore, all Settlement Offer signatories not on the attached Service List are concurrently being served a copy of this submittal.

CERTIFICATE OF SERVICE

PROJECTS: **Stewarts Bridge Hydroelectric Project No. 2047**
 E. J. West Hydroelectric Project No. 2318
 Hudson River Hydroelectric Project No. 2482
 Feeder Dam Hydroelectric Project No. 2554

The preceding correspondence has been provided by Erie Boulevard Hydropower, L.P. by first class mail, to the following individuals, at the following addresses.

SERVICE LIST

| | |
|---|--|
| Mr. Joseph J. Seebode, Chief Regulatory Functions Branch U.S. Department of the Army New York District Corps of Engineers Jacob Javits Federal Building, Room 1937 New York, New York 10278-0090 | Hon. Bernadette Castro, Commissioner NYS Office of Parks, Recreation & Historic Preservation Agency Building No. 1 Empire State Plaza Albany, New York 12238(2 Copies) |
| * Mr. Daniel Fitts, Executive Director Adirondack Park Agency P.O. Box 99 Ray Brook, New York 12977 | Mr. Mike Ludwig Habitat & Protected Resources Division National Marine Fisheries Service 212 Rogers Avenue Milford, Connecticut 06460 |
| Mr. Robert Hargrove, Chief Environmental Impacts Branch Region II U.S. Environmental Protection Agency 290 Broadway New York, New York 10007-1866 | Mr. Richard A. Maitano, Regional Director Region I NYS Department of Transportation 84 Holland Avenue Albany, New York 12208 |
| * Mr. Dave Clark Chief of Environmental Compliance National Park Service 15 State Street Boston, Massachusetts 02109 | Hon. John C. Crary, Secretary NYS Department of Public Service Public Service Commission Three Empire State Plaza Albany, New York 12223 |
| * Ms. Sherry W. Morgan, Field Supervisor U.S. Fish & Wildlife Service 3817 Luker Road Cortland, New York 13045 | * Ms. Lenore Kuwik Division of Environmental Permits NYS Department of Environmental Conservation 50 Wolf Road Albany, New York 12233 |

SERVICE LIST

(Continued)

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Honorable Bruce Babbitt, Secretary
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Mr. John H. Schubert
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Mr. Lee H. Turner
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Arlington, Virginia 22209

SERVICE LIST

(Continued)

- | | |
|---|--|
| Mr. Patrick Close RD No. 3, Box 217 Richland, New York 13144 | Mr. Dennis Lent, Esq. Box 78C Depot Road Duanesburg, New York 12056 |
| *Mr. Bruce R. Brownell Edinburg Marina Box 239 D Northville, New York 12134 | *Mr. George Hodgson, Director Saratoga Environmental Management Council 50 West High Street Ballston Spa, New York 12020 |
| Mr. Donal J. O'Leary P.O. Box 494 Star Route Hadley, New York 12835 | *Mr. Dick Blackmer Adirondack Boardsailing Club, Inc. 109 Oakwood Drive Scotia, New York 12302-4711 |
| *Ms. Betty Lou Bailey, Chairman Canoe Route Subcommittee Conservation Committee Adirondack Mountain Club 4029 Georgetown Square Schenectady, New York 12303 | Mr. Arthur Spring, Esq. Office of the Fulton County Attorney County Office Building Johnstown, New York 12095 |
| Ms. Judith M. Stolfo, Agency Counsel U.S. Department of the Interior Office of the Solicitor One Gateway Center, Suite 612 Newton Corner, MA 02158-2802 | *Mr. David H. Gibson, Executive Director The Association for the Protection of the Adirondacks P.O. Box 951 Schenectady, New York 12301-0951 |
| Mr. Neil F. Woodworth, Counsel Adirondack Mountain Club RR No. 3, Box 3055 Lake George, New York 12845-9523 | *Mr. James E. Mraz, Director Fulton County Planning Department 1E. Montgomery Street Johnstown, New York 12095 |
| Mr. Alexander R. Hoar US Fish and Wildlife Service 300 Westgate Center Drive Hadley, Massachusetts 01035-9589 | *Mr. Bernard C. Melewski, Counsel The Adirondack Council 342 Hamilton Street Albany, New York 12210 |

SERVICE LIST

(Continued)

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*Mr. Dick True, Executive Director
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Mr. F. Michael Tucker
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*Mr. Ken Kogut
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NYS Dept. of Environmental Conservation
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*Ms. Jacqueline Bave, Chairperson
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Mr. Robert Eggink
Acres International Corporation
140 Audubon Parkway
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*Mr. Christopher Reed
Feeder Canal Alliance, Inc.
P.O. Box 2414
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WINSTON & STRAWN

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21 AVENUE VICTOR HUGO
75116 PARIS, FRANCE

April 11, 2000

Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426

Re: Erie Boulevard Hydropower, L.P. – Project No. 2318 - Amendment
of New License Application and Request for Waiver of Deadline for
Final Amendments

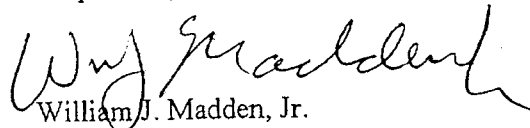
Dear Secretary Boergers:

Transmitted herewith for filing are an original and eight copies of an amendment to the pending application of Erie Boulevard Hydropower, L.P. for a new license for its E.J. West Project, FERC No. 2318.

This filing amends the pending application to add the Hudson River-Black River Regulating District as a co-applicant and requests that separate licenses be issued to each applicant for portions of the project.

This filing is being made for the purpose of implementing a multi-project Settlement Agreement which is being filed concurrently in Project Nos. 2318, 2047, 2482 and 2554.

Respectfully submitted,


William J. Madden, Jr.

ATTORNEY FOR
ERIE BOULEVARD HYDROPOWER, L.P.

cc: Service List

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Erie Boulevard Hydropower, L.P.

and

Hudson River-Black River Regulating
District

)
) Project No. 2318
) (E.J. West)
)

) Project No. _____
) (Great Sacandaga Lake)
)

**AMENDMENT OF NEW LICENSE APPLICATION
AND REQUEST FOR WAIVER OF DEADLINE FOR
FINAL AMENDMENTS**

Pursuant to §§ 385.215(a), 16.9(b)(3) and 16.9(c) of the Commission's Regulations, Erie Boulevard Hydropower, L.P. ("Licensee") hereby amends its pending application for a new license for the E.J. West Project (FERC No. 2318) to add the Hudson River-Black River Regulating District ("Regulating District") as a co-applicant, to request such waivers, including the waiver of any final amendment deadline, which may be necessary to accommodate this amendment, to request that the Commission issue a separate license to the Licensee for the powerhouse and generating facilities (P-2318) and, after, designating a new project number, issue a separate license to the Regulating District for the dam and reservoir.

COMMUNICATIONS

Communications in connection with this amendment should be addressed to:

Jerry L. Sabattis
Hydro Licensing Coordinator
Erie Boulevard Hydropower, L.P.
Suite 201
225 Greenfield Parkway
Liverpool, NY 13088
(315) 413-2787

Thomas E. Brewer
Chief Engineer
Hudson River-Black River
Regulating District
350 Northern Boulevard
Albany, N.Y. 12204
(518) 465-3491

BACKGROUND

On December 11, 1991, Niagara Mohawk Power Corporation ("NIMO") filed an application for a new license for Project No. 2318 which at that time included only a 20 MW powerhouse, known as E.J. West, located at the Regulating District's Conklingville Dam on the Sacandaga River which impounds the 25,940-acre Great Sacandaga Lake. The dam and the lake are owned by the State of New York and operated by the Regulating District. Neither the dam nor the lake are currently licensed. In response to a Commission directive finding the application deficient, NIMO amended its new license application to include the Conklingville Dam and the Great Sacandaga Lake.

Subsequently, a collaborative process was initiated with a large group of stakeholders and intervenors for the purpose of attempting to reach agreement on the terms and conditions on which a new license should be issued for Project No. 2318, as well as for three other downstream NIMO projects.¹ While those negotiations were in progress, NIMO, with the approval of the Commission, sold all of these hydro projects to the Licensee.²

¹ Project Nos. 2047 (Stewarts Bridge), 2482 (Spier Falls/Sherman Island), and 2554 (Feeder Dam).

² By order issued July 26, 1999, the Commission authorized the transfer of the license for these, as well as several other NIMO projects to the Licensee, *Niagara Mohawk Power Corporation, et al.*, 88 FERC ¶ 62,082.

In March 2000, the parties to the negotiations reached an agreement on the terms and conditions which should be included in the new licenses for these projects. That agreement, known as the Upper Hudson/Sacandaga River Offer of Settlement ("Settlement Offer"), is being filed, concurrently with this amendment filing, in each of the four project dockets. Among the principal agreements reached in that Settlement Offer was an agreement that, in the case of Project No. 2318, the Commission should issue a separate license for the E.J. West powerhouse to the Licensee and a separate license to the Regulating District for the dam and reservoir. Each license would, in accordance with the terms of the Settlement Offer, contain appropriate conditions to insure that each licensee operates and maintains its project works to achieve compliance with the agreements reached in the Settlement Offer. In effect the project works to be licensed to the Licensee would be those included in the license issued to NIMO by the then Federal Power Commission on June 25, 1963 and which NIMO originally included in its application filed in 1991, while the project works to be licensed to the Regulating District would be those which NIMO added to its new license application in April 1993 in response to the Commission's deficiency letter.

THE REGULATING DISTRICT

The Regulating District is a state agency which was organized in 1922 pursuant to the provisions of Article VII-A of the Conservation Law of the New York State Code³ and is authorized to plan, finance, build, operate and maintain various storage reservoirs in the State, including the Great Sacandaga Lake.

³ Now codified at N.Y. Envtl. Conser. Law § 15-2101 *et seq.* (McKinney 1984). The Regulating District was originally established as the Hudson River Regulating District and was later merged with the Black River Regulating District which had been established earlier.

**REASONS WHICH HAVE REQUIRED THE CO-APPLICANTS
TO MAKE THIS FILING**

The decision of the signatories to the Settlement Offer to support the issuance of separate licenses, one for Project No. 2318 (the E.J. West powerhouse) and one for the dam and reservoir (Great Sacandaga Lake) was prompted by several overriding legal and policy considerations. First, while the alternative of issuing a single license to the Licensee with a requirement that it acquire a hydroelectric easement or other property interests with respect to the dam and reservoir was considered, it soon became clear that such a course of action would probably face insurmountable legal obstacles. All of the lands affected by the reservoir are owned by New York State and appear to qualify as forest preserve lands. These lands are also part of the Adirondack State Park. Article XIV of the New York State Constitution, however, prohibits the lease or sale of lands which are part of the State's forest preserve. That article provides, in pertinent part, that:

§ 1 The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

Section 9-0101(1) and (6) of the N.Y.S. Environmental Conservation Law provides that the Adirondack State Park shall include, among others, State-owned lands affected by the Conklingville Dam and the Great Sacandaga Lake. Thus, it was determined that to the extent the State-owned lands affected by the dam and reservoir may be forest preserve lands, the

ability of either the Regulating District or any other New York state agency to convey a hydroelectric or other easement⁴ to the Licensee was, at best, highly problematic.

Normally, the power of eminent domain would be available to a licensee under § 21 of the Federal Power Act ("FPA"), thereby eliminating any concern about unwilling sellers of lands needed for project purposes or about inconvenient state law issues. However, in 1992 when Congress enacted the Energy Policy Act, it also amended § 21 of the FPA to make it inapplicable in the case of lands owned by a state or municipality and used as part of a state park. In pertinent part, the following provision was added to § 21 of the FPA:

... no licensee may use the right of eminent domain under this section to acquire any lands or other property that, prior to the date of enactment of the Energy Policy Act of 1992, were owned by a State or political subdivision thereof and were part of or included within any public park, recreation area or wildlife refuge established under State or local law.

16 U.S.C. § 814.

Thus, in the case of the State-owned lands which are part of the Adirondack State Park and used as part of the Great Sacandaga Lake, the right of the Licensee to use the power of condemnation to acquire the right to use those lands is hardly feasible.

Second, although the Licensee and the Regulating District recognized that FERC could issue a single license to them as co-licensees, such an arrangement would likely run up against some of the same legal concerns which make issuance of a single license to the Licensee so problematic. Since the Commission maintains that in a co-licensee situation each co-licensee

⁴ In this connection the parties to the Settlement Offer are aware of this Commission's policy that to comply with standard Article 5 of its licenses, a licensee must acquire or control the right to use in perpetuity all the lands and facilities necessary for the operation of the project.

remains jointly and severally responsible for complying with the license,⁵ such a co-licensee arrangement could raise questions as to whether the District by entering into such an agreement would not, in fact, be conveying some kind of proprietary interest in State-owned forest preserve lands within the Adirondack State Park to the Licensee. Certainly, if it ever became necessary for the Licensee to assume sole responsibility for ensuring compliance with all the terms of the license, the Licensee would hardly be able to exercise adequate control over certain project lands unless it could overcome the very problems it would confront as a sole licensee, namely, the ability to acquire sufficient legal interests in those lands.

In any event, a co-licensee arrangement would require the prior negotiation of a detailed agreement between the Licensee and the Regulating District regarding the operation of the project and regarding unforeseen contingencies which could arise during the term of the license. There is no assurance that such negotiations — particularly given the noted legal concerns — would result in a mutually satisfactory arrangement within any reasonable time-frame.

Accordingly, the parties to the Settlement Offer, including the Licensee and the Regulating District, concluded that under the special circumstances of this case, the issuance of separate licenses would be the most effective and efficient way to secure the objectives of the Settlement Offer while also satisfying the requirements of the FPA.⁶ Section 3 of the Settlement

⁵ See, e.g., *Fourth Branch Associates et al.*, 89 FERC ¶ 61,194 (*mimeo* at 17) (1999); and *New York Irrigation District et al.*, 46 FERC ¶ 61,179 at p. 62, 183 (1989).

⁶ The issuance of separate licenses for different components of integrated hydroelectric facilities, while unusual, is hardly unprecedented. See, e.g., *Susquehanna Power Company et al.*, 32 FPC 826 (1964) (separate licenses for upper and lower reservoirs of pumped storage facility); *Niagara Mohawk Power Corporation*, 40 FPC 185, 188 (1968) and *Finch, Pruyn & Company, Inc.*, 9 FERC ¶ 62,009 (1977) (separate licenses for portions of a dam and for power houses); *Moreau Manufacturing Corporation*, 40 FPC 201 (1968) and *Niagara Mohawk Power Corporation*, 40 FPC 212 (1968) (separate

Offer sets forth several conditions which the parties have agreed should be incorporated into a license to be issued to the Regulating District for the dam and reservoir. Section 4 of Settlement Offer sets forth several conditions which the parties have agreed should be incorporated into a new license to be issued to the Licensee for Project No. 2318 for the E.J. West powerplant.

**THE ADDITION OF A CO-APPLICANT IS PERMISSABLE
AT THIS STAGE OF THE PROCEEDING**

The addition of the Regulating District as a co-applicant on the application for new license for Project No. 2318 is permissible under the Commission's Regulations, does not require the filing of any additional information or studies, and will not delay the completion of the pending licensing proceeding.

Section 16.9(c) of the Regulations provides that all amendments to an application for a new license must be filed no later than the date specified in the public notice establishing the processing schedule pursuant to § 16.9(d)(2) (final amendment deadline). That date has long since passed in the case of Project No. 2318. That final amendment deadline, however, can be waived for appropriate cause,⁷ and the Licensee and Regulating District request that it be waived for the purposes set forth herein, as well as for the purpose of accommodating the amendments to the application agreed to by the parties to the Settlement Offer being filed concurrently herewith.

The description of the facilities to be licensed to the Regulating District and of the environmental impacts of those facilities is already contained in the drawings and exhibits

license for primary transmission line); and *Kennebee River Pulp & Paper Co. et al.*, 41 FPC 754 (1969) (license for storage reservoir providing river regulation to downstream licensed projects).

⁷ 18 C.F.R. § 375.314(c)(9).

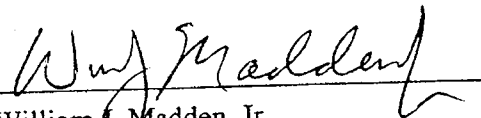
submitted with the pending license application. The Licensee and the Regulating District would propose, within 180 days of the approval of the Settlement Offer and the issuance of the licenses, to submit revised Exhibit F and G drawings showing the facilities licensed to each entity.

CONCLUSION

The Licensee and the Regulating District hereby amend the pending application for license for Project No. 2318 to add the Regulating District as a co-applicant, request a waiver of any applicable final amendment deadline and any other applicable requirement, and request that separate licenses be issued in accordance with the terms of the Settlement Offer which is being filed concurrently herewith.

Respectfully submitted,

ERIE BOULEVARD HYDROPOWER, L.P.


By: 

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John A. Whittaker, IV
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Its Attorneys

and

**HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT**

By: 

Thomas E. Brewer
Hudson River-Black River
Regulating District
350 Northern Boulevard
Albany, N.Y. 12204

(518) 465-3491
Its Chief Engineer

By: Bernard Kaplowitz
Bernard Kaplowitz
Kaplowitz, Murphy, Runion Frits
& Whiting
267 Delaware Avenue
Delmar, N.Y. 12054
(518) 439-8191
Its Attorney

Dated: March 28, 2000

VERIFICATION

William J. Madden, Jr. being duly sworn states that he is the attorney for Erie Boulevard Hydropower, L.P. ("Licensee"), that he has read the foregoing application, that the statements therein are true to the best of his knowledge and belief, and that he is authorized to execute this application on behalf of the Licensee.

W J Madden
William J. Madden, Jr.

Date: March 28 '00

Subscribed and sworn before me, a notary public of the state of

Washington D.C. this 28th day of March, 2000.

Seal

Josephine Newman
Print Name: Josephine Newman

Notary Public in and for the District of
Columbia

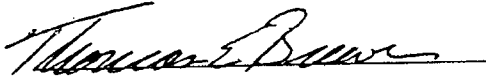
Residing at 148 33rd St. N.E. Wash. DC.

My Commission Expires March 31, 2001

VERIFICATION

State of New York)
County of Albany)

Thomas E. Brewer being duly sworn states that he is the Chief Engineer of the Hudson River-Black River Regulating District ("District"), that he has read the foregoing application, that the statements contained therein are true to the best of his knowledge and belief, and that he has authority to execute the foregoing application on behalf of the District.



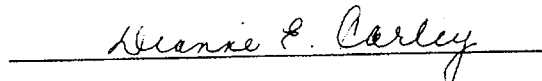
Thomas E. Brewer

Dated: 3/27/00

Subscribed and sworn before me, a notary public of the state of

New York this 27th day of March, 2000.

Seal



Print Name: DIANNE E CARLEY

Notary Public in and for the

State of New York

Residing at Rensselaer County

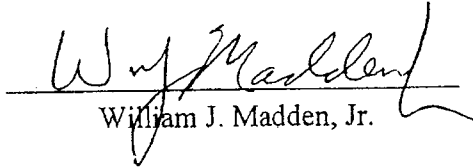
My Commission Expires: 4/30/2000

DIANNE E. CARLEY
Notary Public, State of New York
Residing in Rensselaer County
No. 4519864
Term Expires 4/30/2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (1998).

Dated at Washington, D.C., this 11th day of April 2000.



William J. Madden, Jr.



POWER NEW YORK

225 GREENFIELD PARKWAY, SUITE 201 • LIVERPOOL, NY 13088
PHONE: (315) 413-2700 • FAX: (315) 461-8577

April 12, 2000

Hon. David Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Re: New License Applications For
Erie Boulevard Hydropower, L.P.'s
E.J. West Project No. 2318,
Stewart's Bridge Project No. 2047 and
Hudson River Project No. 2482; and
Feeder Dam Project No. 2554;
Collectively the "Upper Hudson/Sacandaga Projects")
Filing of Additional Signatory to Settlement Offer

Dear Secretary Boergers:

By letter dated April 11, 2000 from the undersigned, Erie Boulevard Hydropower, LP filed a document with the Commission entitled Upper Hudson/Sacandaga River Offer of Settlement (Settlement Offer) pertaining to the above-referenced hydroelectric projects. In today's mail I received the enclosed signature from the National Audubon Society, a non-governmental organization, denoting its signature agreeing with the Settlement Offer. National Audubon Society was not previously responsive to our March 8, 2000 request for signatures to the Settlement Offer and two subsequent reminder calls. Therefore, they were assumed to not be interested in signing this Settlement Offer and were not listed as a signatory in Section 1.0 of the Settlement Offer filed via the aforementioned April 11, 2000 letter.

Now that National Audubon Society's signature has been belatedly tendered, please append the enclosed signature page (original and eight (8) copies) to the Settlement Offer just filed with the Commission. My apologies for any inconvenience this additional signatory filing may cause.

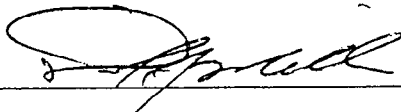
Very truly yours,

Jerry L. Sabattis
Hydro Licensing Coordinator

Enclosures: National Audubon Society Signature Page
Attached Service List
xc w/Encl: J. M. Robinson
S. S. Hirschey
W. J. Madden
Service List
Settlement Offer Signatories

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: National Audubon Society NYS

By: 
David J. Miller

Title: Executive Director

Date: 3/29/00

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Erie Boulevard
Hydropower, LP**

) **Project Nos. 2318, 2047**
) **2482 and 2554**

**UPPER HUDSON/SACANDAGA RIVER
OFFER OF SETTLEMENT**

MARCH 27, 2000

UPPER HUDSON/SACANDAGA RIVER OFFER OF SETTLEMENT

Great Sacandaga Lake
E. J. West Project, FERC No. 2318
Stewarts Bridge Project, FERC No. 2047
Hudson River Project, FERC No. 2482
(Spier Falls and Sherman Island Developments)
Feeder Dam Project, FERC No. 2554

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UPPER HUDSON/SACANDAGA SETTLEMENT AGREEMENT

E. J. West Project, FERC No. 2318
Stewarts Bridge Project, FERC No. 2047
Hudson River Project, FERC No. 2482
(Spier Falls and Sherman Island Developments)
Feeder Dam Project, FERC No. 2554

1.0 INTRODUCTION

The Agreement and The Parties

This agreement (the "Settlement Offer") dated as of March 8, 2000, is made and entered into pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC") (18 C.F.R. § 385.602) by and among the following entities who shall, except as otherwise noted, be referred hereafter to as a Party and collectively as "Parties":

- Adirondack Boardsailing Club Inc.;
- Adirondack Council;
- Adirondack Mountain Club ("ADK");
- Adirondack Park Agency ("APA");
- Adirondack River Outfitters, Inc;
- American Rivers
- American Whitewater ("AW");
- Association for the Protection of the Adirondacks;
- Erie Boulevard Hydropower, L.P. (Erie);
- Feeder Canal Alliance;
- Fulton County Board of Supervisors;
- Glens Falls Chapter of the Adirondack Mountain Club;
- Great Sacandaga Lake Association;

- Great Sacandaga Lake Fisheries Federation, Inc.;
- Great Sacandaga Lake Marinas;
- Hudson River/Black River Regulating District ("Regulating District");
- Hudson River Rafting Co., Inc;
- International Paper Company;
- New York Rivers United ("NYRU");
- New York State Conservation Council;
- New York State Department of Environmental Conservation ("NYSDEC");
- Niagara Mohawk Power Corporation (NMPC);
- Sacandaga Outdoor Center;
- Saratoga County Board of Supervisors;
- Town of Hadley;
- Trout Unlimited ("TU");
- U.S. Department of the Interior ("DOI"), U.S. Fish and Wildlife Service ("USFWS")
- U.S. Department of the Interior ("DOI"), National Park Service ("NPS");
- W.I.L.D.W.A.T.E.R.S.

1.1 Term of the Settlement Offer

This Settlement Offer shall become effective when it has been executed by the above-referenced Parties and shall remain in effect, in accordance with its terms, throughout the term of the new license(s) including any annual licenses.

1.2 Agreements to Be Incorporated As License Conditions and Enforceability

The agreements in the Settlement Offer are a comprehensive, integrated and indivisible set of measures intended to address non-power and power values relating to the relicensing of all four projects together, based on the substantial amount of information available from a number of sources, including the new license applications, the subsequent filings of additional information and the subsequent negotiations and analyses conducted by the Parties.

The Parties agree that each term of this Settlement Offer is in consideration and support of every other term and that it is essential that the FERC, with the exception of the Sections of the Settlement Offer noted in Table 1.2-1 below, incorporate as license conditions in the new licenses each of the commitments which Erie and the Regulating District have respectively agreed to undertake in **Sections 2.0 through 8.0** of this Settlement Offer. In this section as well as others, "license conditions" are intended to mean numbered articles of license.

Table 1.2-1
Sections of Settlement Offer to be Omitted from New Licenses

| | |
|---------------------------|--|
| Section 1.0 | (to be omitted from licenses entirely) |
| Section 3.0 | (to be omitted from Erie Boulevard Licenses entirely) |
| Sections 4.0 - 7.0 | (subsections to be omitted entirely or partially from licenses as shown below): |
| Section 4.0 | E.J. West Project |
| Section 4.3.1 | (Route 4 overlook) Existing facility located on County Land to be included only for licensee responsibility for improvements. Not to be included in Project Boundary |
| Section 5.0 | Stewarts Bridge Project |
| Section 5.5.2.1 | (River Manager Program) Existing commercial program, not in Project Boundary. To be omitted entirely in new license. |
| Section 5.5.2.2.1 | (North Side Put-In Area) Within the existing Project Boundary. To be included in new license as new project facility to be constructed by Erie. Ownership to be transferred to NYSDEC for long term operation and maintenance. New facilities to be deleted from license and Project Boundary redrawn if necessary upon transfer. |
| Section 5.5.2.2.2 | (South Side Take-Out Area) Not in Project Boundary. Included in new license only for construction responsibility of Erie. Ownership to be transferred to NYSDEC for long term operation and maintenance. |

- Section 5.5.2.3.1 (South Side Put-In Area)
Existing commercial facility not in Project Boundary. To be omitted entirely in new license.
- Section 5.5.2.3.2 (North Side Take-Out Area)
Existing commercial facility not in existing Project Boundary. To be omitted entirely in new license.
- Section 6.0 Hudson River Project**
- Section 6.4.2.5 (Town of Queensbury Boat Launch)
To be developed and maintained by others outside Project Boundary with cooperation of Erie, to be omitted entirely in new license.
- Section 7.0 Feeder Dam Project**
- Section 7.4.2 (Overlook Park)
Partly in Project Boundary. Included in new license only for construction of certain facilities by Erie. Ownership and long term operation and maintenance by others. New facilities to be deleted from the Project Boundary upon completion.
- Section 8.0 Advisory Councils, Enhancement Funds and Reassessment of Benefit Charges:**
- Section 8.1 (River Basin Council)
To be omitted entirely in new licenses
- Section 8.2 (Advisory Councils)
To be omitted entirely in new licenses.
- Section 8.3 (Enhancement Funds)
Included in new licenses only for annual reporting requirements by Erie.
- Section 8.4 (Reassessment of Benefits Charges by the Regulating District)
To be omitted entirely in new licenses.

Appendices (to be omitted entirely from licenses)

1.3 Purpose and Goals

The purpose of this Settlement Offer is to document the agreements that have been reached as the result of comprehensive discussions among the Parties with regard to the referenced hydroelectric projects with pending new license applications before the FERC and either pending applications for water quality certification before NYSDEC or denials thereof. The five projects covered by the terms of this Settlement Offer, are:

- Great Sacandaga Lake (Dam and Reservoir)

- E.J. West Project, FERC No. 2318
- Stewarts Bridge Project, FERC No. 2047
- Hudson River Project, FERC No. 2482 (Spier Falls and Sherman Island Developments)
- Feeder Dam Project, FERC No. 2554

A detailed description of these projects is set forth in Appendix A of this Settlement Offer.

The goal of the Settlement Offer is to provide for the continued operation of the subject projects with appropriate long-term environmental protection measures that will meet diverse objectives for maintaining a balance of non-power and power values in the Upper Hudson River Basin. The Settlement Offer is also intended to permit the continued operation of the Great Sacandaga Lake to provide flow augmentation, flood control benefits, and recreational opportunities to the Upper Hudson River basin.

The geographic scope of this Settlement Offer includes the Sacandaga River and the Hudson River upstream of the Troy Lock and Dam.

The Parties, having given careful and equal consideration to non-power and power values, provide in this Settlement Offer the terms and conditions for the resolution of operational, fisheries, wildlife, water quality, and recreational issues raised by and analyzed by the Parties as they are applicable to the issuance of new licenses and Water Quality Certifications for the subject projects.

1.4 Enforceability

In the event that FERC should issue new license(s) that omits any of the foregoing commitments or reduces any of the commitments under this Settlement Offer and, in the event that the new license(s) are not thereafter satisfactorily modified as the result of the filing of a request for rehearing pursuant to Section 2.10 of this Settlement Offer, each of the Parties agrees that it will nonetheless be bound by all such commitments of this Settlement Offer as long as the performance of those commitments would not violate the

terms of the new license and that any such commitments not included by FERC in the new licenses will be enforceable in a court or other forum of competent jurisdiction by and against any of the Parties.

1.5 Basis of Settlement Offer

Set forth in Appendix B to this Settlement Offer is a detailed compilation of the various statutory considerations which are applicable and pertinent to this Settlement Offer.

The provisions of this Settlement Offer are based, in part, on the statutory understanding of the Parties set forth in Appendix B, and on various studies and analyses conducted as part of the Licensee's Applications for New License (see Appendix C), the applications for new Licenses, responses to Additional Information Requests, and on the negotiations leading up to this Settlement Offer, wherein a number of alternatives for project operation and environmental protection measures were investigated. Table 2.1-1 summarizes the implementation schedule for Settlement Offer provisions for the Projects.

The signatories understand that the flow data used to analyze and compare effects on Great Sacandaga Lake elevations and downstream Hudson River flows for various operating schemes was the daily U.S. Geological Survey (USGS) flow at the Hope and Hadley gauges for the period 1922-1995. All schemes were analyzed by using the HEC5P program.

It is also understood that the performance parameter results, as depicted in Appendix D, are based on simulated results of the HEC5P program and that these results depict average performance conditions occurring over the 74 year period of simulation.

1.6 Matters Not Addressed By Settlement Offer

FERC and Erie are currently engaged in the review and analysis of methods to ensure that the Stewarts Bridge Project will safely pass the Probable Maximum Flood ("PMF"). Among the potential solutions being considered is installation of additional flow discharge capability at the Conklingville Dam. Any future improvements such as

actions to address the PMF, which may introduce opportunities to further enhance operations at the Great Sacandaga Lake, are not addressed in this Settlement Offer, and are subject to appropriate regulatory review to be conducted outside this settlement pursuant to existing state or federal laws and regulations.

The details associated with procuring a hydroelectric easement from the State for the use of State land and facilities at the Feeder Dam Project, including the Feeder Dam itself, is not addressed by this Settlement Offer.

The potential for reassessment and amendment of the water lease costs charged to Erie by the Regulating District for the E.J. West Project has not been addressed in this Settlement Offer.

1.7 Project Decommissioning

This Settlement Offer does not include any provisions relating to decommissioning or dam removal of the subject projects in whole or part. With or without amendment of this Settlement Offer, any Party may seek such further relief from FERC regarding such decommissioning as FERC may order, recognizing that no Party to this Settlement Offer has, or is advocating decommissioning of any development of the subject projects or any of the project facilities during the term of the new licenses. If and when any of the subject projects are decommissioned or retired during the term of any new licenses, the disposition of any enhancements associated with those projects pursuant to this Settlement Offer will be determined in decommissioning proceedings at that time.

1.8 Potential for Regulating District to Become a Licensee

In order to assure that the Regulating District is in compliance with applicable requirements of Article XIV of the New York State Constitution respecting the preservation of forest preserve lands as described in Appendix B, the Regulating District and Erie will make an appropriate filing with FERC seeking an amendment of the Erie's pending new license application for the E.J. West Project so that the Regulating District can be issued a separate license for the project lands and project works which are under

its jurisdiction. The Parties agree that FERC should issue such license to include those terms and conditions of the Settlement Offer which relate to the operation and management of those project lands and projects works.

1.9 Successors and Assigns

The Settlement Offer shall be binding on the Parties and on their successors and assigns.

1.10 Agency Appropriations

Nothing in this Settlement Offer shall be construed as obligating any federal, state or local government agency to expend in any fiscal year any sum in excess of appropriations made by Congress or state or local legislatures or administratively allocated for the purpose of this Settlement Offer for the fiscal year, or to involve the DOI, USFWS or NPS in any contract or other obligation for the future expenditure of money in excess of such appropriations or allocations.

1.11 Parties To Support Regulatory Approvals

The Parties agree to support the issuance of new licenses and water quality certifications which are consistent with the terms of this Settlement Offer. This support shall include reasonable efforts to expedite the National Environmental Policy Act (NEPA) process to be undertaken by the FERC as well as any regulatory approvals that may be needed to implement provisions of the Settlement Offer. For those issues addressed herein, the Parties agree not to propose or otherwise communicate to FERC or to any other federal or state resource agency with jurisdiction directly related to the relicensing process any comments, certification or license conditions other than ones consistent with the terms of this Settlement Offer. However, this Settlement Offer shall not be interpreted to restrict any Party's participation or comments in future relicensings of any of the subject projects.

1.12 Establishes No Precedents

The Parties have entered into the negotiations and discussions leading to this Settlement Offer with the explicit understanding that all offers of settlement and the discussions relating thereto are privileged, shall not prejudice the position of any Party or entity that took part in such discussions and negotiations, and are not to be otherwise used in any manner in connection with these or any other proceedings. The Parties understand and agree that this Settlement Offer establishes no principles or precedents with regard to any issue addressed herein or with regard to any Party's participation in the next relicensing proceeding and that none of the Parties to this Settlement Offer will cite this Offer, its approval by FERC, or NYSDEC as establishing any principles or precedents except with respect to the matters to which the Parties have herein agreed.

1.13 Water Quality Certification — Withdrawal Rights

The Parties agree that they will support the issuance by NYSDEC of section 401 Water Quality Certifications which are consistent with the provisions of this Settlement Offer. If NYSDEC should issue a 401 certification for any of the projects which is materially inconsistent with the provisions of this Settlement Offer, any Party can, as to the project in question, withdraw from this Settlement Offer by providing written notice of its intention to do so to the other Parties within 60 days from the date of issuance of any such certification or, in the event any Party seeks judicial or agency review, 60 days from the date of the denial of such review. The NYSDEC will distribute to the Parties copies of any 401 certifications which are issued.

1.14 Conventions and Definitions

The Parties agree that the following conventions and definitions should have the meanings so noted throughout this Offer of Settlement. Abbreviations used in the Offer of Settlement can be found in Appendix A, Section A.1.1.

Aggressive Use of Storage: Using the storage capability of Great Sacandaga Lake while adhering to maximum flow targets on the Hudson River below the confluence

with the Sacandaga River to enhance hydroelectric generation and limit high flows on the Upper Hudson River as described in Section 3.0 of this Settlement Offer and referenced in Table D.

Annual Guide Curve: A graphic illustration of the target lake level elevations for Great Sacandaga Lake over the course of the year.

Average Performance Conditions: Based on the performance parameter table results contained in the Final HEC5P report. The performance results depict average conditions occurring over the 74-year period of reservoir simulation. An average performance condition does not imply that the same performance will be achieved with the same periodicity every year. There will be years where a performance condition drops considerably below the average. Conversely, years will occur where the performance improves considerably. Average performance conditions only indicate that on average, after many years, one can expect that this performance criterion will be achieved a certain percent of the time.

Base Flow: The required minimum instantaneous instream flow, measured in cfs, to be continuously released into the river channel below the powerhouse, including, where applicable, fish movement flow at the lowest allowable impoundment level, dam leakage where an accurate estimate exists, and bypass flows.

Bypass Reach: The portion of original river bed fully or partially dewatered as a result of the diversion of water.

Core Hours of Whitewater Releases: From 11:00 a.m. to 2:00 p.m. Core hours do not necessarily represent the mid-point of daily hydro generation.

Critical Low Flow in the Hudson River: A low flow condition that necessitates flow augmentation.

Downstream Beneficiaries: Current beneficiaries of the operation of Great Sacandaga Lake for flood control and flow augmentation located along the Hudson River (See Section 8.4).

Elevation: Vertical distance, measured in feet above mean sea level using USGS datum.

Flow Augmentation: The addition of flow from Great Sacandaga Lake to the Hudson River to supplement flows in the Hudson River during low flow periods.

Great Sacandaga Lake Recreation Season: Memorial Day weekend through Columbus Day weekend.

HEC5P Model: A data file coded in a specific required format that defines a system of reservoirs and their operation within a basin. After reading this data file the HEC5P program performs a computer simulation of the proposed system. The HEC5P model used for this Settlement simulates the operation of the Sacandaga-Upper Hudson River system, from the E.J. West development on the Sacandaga River down through and including the Feeder Dam development.

Impoundment Fluctuation: Defined within this agreement as USGS elevations, except that fluctuations above the defined upper limit are not considered as an impoundment fluctuation.

Instantaneous Minimum Flow: The minimum instantaneous flow in a river, measured in cfs, at any given point in time; an instantaneous flow does not include the averaging of higher and lower flows.

Left/Right Bank: The left or right river bank as seen looking downstream.

License Issuance and Acceptance: For purposes of this Offer of Settlement, "License Issuance and Acceptance" means that FERC issues final licenses consistent with the terms of the Offer of Settlement relative to the particular enhancement being considered.

Licensee: Erie Boulevard Hydropower, L.P., or the Regulating District as to their respective projects and responsibilities.

Minimum Daily Average Flow: This flow requirement is on a daily average basis, and instantaneous requirements are not considered. This requirement targets a flow at a specified basin location that must be met on a daily average basis, except where specifically noted in this Agreement.

Minimum Flow (also called Bypass Flow): The instream flow intentionally and continuously released into a bypass reach (e.g., at Sherman Island)

Orion Power: Orion Power New York, General Partner of Erie Boulevard Hydro Power, L.P.

Recreation Season: Unless otherwise specified herein, the period of time between Memorial Day weekend and Labor Day weekend.

Storage and Release Peaking: The daily operation of generating facilities to utilize allowable impoundment storage capacity to produce energy during peak demand hours.

Targeted Elevation: A point on the annual guide curve that is the elevation of daily Great Sacandaga Lake operations shown on Level Curve 3.

Targeted Maximum Flow on the Hudson River: A designated flow in the Hudson River below the confluence with the Sacandaga River, measured in cfs, to be approached but not exceeded to the extent practicable when flows in the Sacandaga River are added to flows in the Hudson River.

Unusual Meteorological Conditions: Unusually high or low precipitation which, when combined with associated meteorological trends and other factors (*e.g.*, soil saturation and water equivalent of snowpack), make it likely that runoff into lakes and rivers will be abnormally high or low in the Upper Hudson River basin.

Walleye Spawning Season: Walleye spawning season will start when water temperature reaches 4 degrees Celsius (39.2 degrees Fahrenheit) for four consecutive days after March 15th of each year. Walleye spawning season will end 30 days after water temperature has reached 10 degrees Celsius (50 degrees Fahrenheit) for four consecutive days.

Water Quality Conditions: The parameters for chemical and physical water quality, as well as designated uses, embodied in regulations implementing applicable provisions of the Environmental Conservation Law of New York State.

Whitewater Recreation Period: Weekdays starting after the third Saturday in June and continuing until Labor Day. Weekends starting Memorial Day and continuing through Columbus Day.

Winter drawdown: With reference to Great Sacandaga Lake, the lowest elevation to which the lake may be drawn between the dates of January 1 and April 30 annually, unless specific exceptions apply.

1.15 Article XIV of the New York State Constitution

The parties to this settlement agree that any arrangement or agreement among them with respect to any FERC License (*i.e.*, single licensee, multiple licensees, co-licensees), and/or operating agreement will be consistent with Article 14, Section 1 of the New York State Constitution as well as Section 21 of the Federal Power Act. The parties further agree that there will be no transfer of real property interest in the form of fee title, lease, or easement from the State of New York and/or the Hudson River Black River Regulating District to Erie, its successors and assigns, for lands within the Adirondack Park or Forest Preserve for any purpose, including as a means of complying with the Federal Power Act.

2.0 GENERAL AGREEMENTS OF THE PARTIES

2.1 Implementation Schedule

The Parties agree that the schedule set forth in Table 2.1-1 should be followed by the Licensees and the Parties named therein in implementing this Settlement Offer. The schedule will be adjusted, as appropriate, as to those measures with respect to which any rehearing or court appeal is pending (see also Section 2.4 below).

2.2 Separate Licenses and Term

The Parties agree that FERC should issue separate new licenses for The Great Sacandaga Lake and the E.J. West, Stewarts Bridge, Hudson River and Feeder Dam Projects. The Parties further agree that the new licenses should be issued simultaneously and that each should be for a term of 40 years.

2.3 Section 18

The Parties agree that FERC should include as a condition of each of the new licenses the Secretary of the Interior's exercise of his authority, pursuant to § 18 of the Federal Power Act (FPA), by reserving that authority to prescribe the construction, operation and maintenance of such fishways, as deemed necessary.

2.4 Rehearings

The Parties agree that none of them will file a request for rehearing of any new license unless the license contains conditions which are materially inconsistent with the terms of this Settlement Offer or omits as license conditions terms of the Settlement Offer which the Parties have agreed should be included as license conditions. In the event that any Party decides to file a request for rehearing in accordance with the terms of

Table 2.1-1
Summary Implementation Schedule for the Sacandaga/Hudson River Settlement Offer

| Site | Impoundment Fluctuation Limits | Base Flows | Bypass Flows | Fish Protection | Downstream Movement Flows | Recreation Facilities | Whitewater Program |
|--------------------------------------|-------------------------------------|--|--|--------------------|---------------------------------|---|--|
| Great Sacandaga Lake ² | Upon License Issuance See Note 2 | | | | | | |
| E.J. West | | | | 2002 ³ | | Within 18 Months of License Issuance ¹ | |
| Stewarts Bridge | Upon License Issuance ¹ | 1/1/13 | | 2008 ⁴ | 2008 ⁴ | Within 18 Months of License Issuance ¹ | Within 18 Months of License Issuance ¹ |
| Spier Falls | Upon License Issuance ¹ | | | 2010 ⁴ | 2010 ⁴ | Within 18 Months of License Issuance ¹ | |
| Sherman Island | Upon License Issuance ¹ | | Within 18 months of License Issuance ⁵ | 2006 ⁴ | 2006 ⁴ | Within 18 Months of License Issuance ¹ | |
| Feeder Dam | Upon License Issuance ¹ | Upon License Issuance ¹ | | 2004 ⁴ | 2004 ⁴ | Within 18 Months of License Issuance ¹ | |

¹For the purposes of this Table "License Issuance" means that FERC issues a license consistent with the terms of the Settlement Offer relative to the particular enhancement being considered. The License will be considered acceptable if it is consistent with terms of the Settlement Offer.

²All specific measures for Great Sacandaga Lake are shown in Table 3.0-1. Interim measures are described in Section 3.9.

³Fish protection at E.J. West will be installed no later than 12/31/02, regardless of license issuance date.

⁴The implementation dates for the individual projects (excluding E.J. West) assumes installation by 12/31 of that year, but may change depending on field conditions, without altering the commitment to install fish protection and downstream movement facilities in each of the years indicated. Any changes to the schedule shown above will be upon mutual agreement among USFWS, NYSDEC and the Licensee.

⁵Walleye spawning flow will be initiated in the first walleye spawning season following license issuance

this provision, it will provide written notice of its intent to do so to the other Parties at the earliest practicable time and thereafter the other Parties will, if time permits, join in the rehearing request or file an appropriate and supportive rehearing request of their own. If there is not adequate time for a Party to file a supportive rehearing request, it shall nonetheless advise FERC of its support of the request for rehearing at the earliest practicable time. Thereafter, if any Party, following the issuance of a FERC Order on Rehearing, elects to file a petition for judicial review with respect to the matters covered by this provision, the other Parties will not oppose such a petition.

2.5 Dispute Resolution

The respective Licensee with regard to its project(s) shall report to the FERC any dispute among the Parties regarding the terms or implementation of the Settlement Offer. Included in its report, the respective Licensee shall identify the subject of the dispute, and the attempts by the signatories to resolve the dispute (including the dates and results of meetings and written correspondence). If the Parties have not resolved the dispute through informal measures within 45 days of the report, the Licensee shall petition FERC for alternative dispute resolution pursuant to 18 C.F.R §§ 385.603 and 604, or some other formal process approved by the Parties and FERC. The Licensee shall not petition FERC to amend its license in a manner which is inconsistent with the terms of this Settlement Offer, without first having complied with the provisions of this section or of section 2.7.

2.6 Reopeners

The Parties agree that, except as provided herein, this Settlement Offer is not intended to limit or restrict the ability of any Party to petition FERC pursuant to any reopener condition contained in the new licenses including any exercise by the Secretary of DOI relating to his fishway prescription authority under § 18 of the FPA. No such petition including the exercise of § 18 authority may be filed which would, if granted, be materially inconsistent with this Settlement Offer unless the Party who files the petition has substantial evidence that a change in circumstances has occurred which provides good cause for the filing of the petition. Before any Party files such a petition with the FERC, it shall provide at least 60 days written notice of its intention to do so to all the

other Parties and, promptly following the giving of notice, has consulted with the other Parties regarding the need for and the purpose of the petition. In the event such a petition is filed, the filing Party shall include with its filing documentation of its consultation with the other Parties and a summary of their recommendations and of its response to those recommendations. The filing Party shall also serve a copy of its petition on all the other Parties.

2.7 License Amendments

The Parties agree that, except as provided herein, nothing in this Settlement Offer is intended to limit or restrict the ability of the Licensees to seek amendments of any of the new licenses. The Licensee(s) may only seek a license amendment which would be materially inconsistent with the provisions of this Settlement Offer if it has substantial evidence that a change in circumstances has occurred which provides good cause for the filing of the amendment and has provided the Parties at least 60 days written notice of its intention to do so, and promptly following the giving of notice has consulted with the Parties regarding the need for and the purpose of the amendment. For other license amendments which just relate to the license terms set forth in this Settlement Offer, the Licensees shall provide all Parties at least 30 days notice of the proposed amendment and, if requested to do so by any Party, shall consult with the Parties regarding the amendment and defer the filing for another 30 days. In any application for an amendment which relates to any of the terms and conditions of this Settlement Offer, the Licensee(s) shall document its consultation, summarize the positions and recommendations of the Parties and provide its response to those positions and recommendations. The Licensee(s) shall serve a copy of any application for amendment upon the Parties at the time of the filing. The Licensee(s) will not oppose an intervention request filed by any Party in an amendment proceeding involving any of the new licenses.

2.8 Fish Movement and Protection Measures

Erie shall provide measures to facilitate downstream fish movement at all of the hydroelectric developments except E.J. West, and shall provide fish protection measures

at all five developments of the E.J. West, Stewarts Bridge, Hudson River and Feeder Dam Projects. Installation of downstream fish movement and protection measures shall be phased in as specified in Table 2.1-1. The following conditions shall apply to all five developments where fish protection and/or downstream movement measures are being provided:

- Erie shall not be required to provide upstream fish passage facilities at this time.
- Erie shall not be required to: (1) test the effectiveness of any, or all, of the components of the movement and protection measures, (2) make qualitative or quantitative determinations of numbers of fish entrained, or (3) provide compensation for any fish entrained.
- Erie shall not be required to increase the level of protection provided or be required to add additional points of downstream fish movement beyond what is specified in Sections 4.2, 5.2, 6.2, and 7.2, unless prescribed by the Secretary of DOI under Section 18 of the FPA.

Downstream fish movement and protection measures may consist of one, or all, of the following components: (1) trashracks with 1-inch clear spacing designed to deter many adult fish from entering the turbine(s) of a given development; (2) an alternate route of downstream fish movement out of a given impoundment, and (3) a movement and plunge pool system designed to reduce damage to fish after moving out of a given impoundment (safe fish movement).

The geometry of the water conveyance opening of all downstream fish movement release structures shall be modified, as needed, to reduce the potential of damage to fish as they move through the release structure. If the release structure empties onto the face of a spillway, Erie shall provide a means to reduce dispersion of the release across the face of the spillway. Additionally, Erie shall reduce the roughness of the spillway face and provide a plunge pool at the toe of the spillway. Plunge pools shall have a depth of approximately 25 percent of the vertical distance of any free fall.

Trashracks with 1" clear openings will be installed at all sites to physically deter most adult game fish from entering the turbines. Smaller fish, which generally have a higher survival rate through the turbines, may also be behaviorally deterred by these devices. These fish protection measures will be implemented over time, commencing with E.J. West, which will be implemented no later than December 31, 2002. Some exceptions to the implementation schedule may occur to allow for construction of fish protection measures at the remaining developments to occur in conjunction with other maintenance activities or to replace deteriorated trashracks. However, at least one of the remaining developments will receive fish protection measures every two years beginning in 2004, with all measures in place by December 31, 2010.

A 25 cfs release for downstream fish movement will be provided through a new or existing gate at each development except E.J. West. These gates will be designed or modified, as necessary, to insure safe downstream movement of fish. These modifications will include reducing the roughness of the spillway, reducing dispersion of the release across the spillway face, and creating an adequate plunge pool.

Under special circumstances Erie may temporarily curtail and/or suspend the operation of downstream fish movement and/or protection measures at the subject projects. Reasons for such temporary curtailment or suspension include, but are not necessarily limited to, the following occurrences:

- Maintenance, repair, or reconstruction of project facilities;
- Maintenance, repair, or reconstruction of non-project facilities such as roads, bridges or other structures adjacent to or in the river;
- Any emergency situation related to dam safety, human life or property, or rescue operations.

Any curtailment or suspension of the operation of downstream fish movement or protection measures will be for the minimum duration necessary and operation of such measures will be restored as soon as possible. Before curtailing or suspending the operation of such measures Erie shall consult with appropriate NYSDEC staff regarding

the need and approval to curtail or suspend the provision of downstream fish movement and protection measures. It will be the responsibility of NYSDEC staff to notify the USFWS (and the APA as needed) as well as Saratoga County of the request. Documentation of the consultation with NYSDEC staff must describe the need for the curtailment or suspension, and specify the expected duration of the curtailment or suspension of movement provisions. Advance consultation with NYSDEC will not be deemed necessary, if an emergency situation exists where consultation will slow down or impair Erie's ability to address immediate dangers related to dam safety, human life or property. NYSDEC will, however, be notified within 72 hours of the emergency situation and as soon as possible of the steps taken by Erie.

2.9 Upstream Fish Passage

The Parties agree that no upstream fish passage measures should be required at this time, but the new FERC licenses for each of the projects should include the standard license article reserving the ability of FERC to require such fish passage in the future and should include the full reservation of the Secretary of the Interior's § 18 authority pursuant to Section 2.2 of this Settlement Offer.

2.10 Downstream Fish Passage

The Parties agree that in view of Erie's commitment to install flow release structures described in Section 2.11 and the fish movement and protection measures described in Section 2.8, no downstream fish passage structures are being required at this time. The new FERC licenses for each project should include the standard license article reserving the ability of FERC to require such fish passage in the future and should include the full reservation of the Secretary of DOI's § 18 authority pursuant to Section 2.2 of this Settlement Offer.

2.11 Flow Release Structures

Erie will design and install flow release structures as described in Sections 5.0, 6.0 and 7.0 of this Settlement Offer to minimize adverse impacts to fish moving downstream. Final details of designs, including final locations of fish protection and

conveyance measures (*e.g.*, plunge pools, piping, etc.) and their cost effectiveness, will be based on field inspections and professional judgment of Erie, the USFWS, and NYSDEC. Installation will be undertaken by Erie in accordance with the schedule set forth in Table 2.1-1.

2.12 Erie's Responsibilities For Flow And Water Level Monitoring

Erie will develop a stream flow and water level monitoring plan in consultation with the Regulating District (as it concerns their operations), NYSDEC, USFWS and, in the case of the Stewarts Bridge Project, Fulton and Saratoga Counties and all other Parties within six (6) months of FERC license issuance and acceptance. The monitoring plan shall include all gages and/or equipment to:

- determine the stage and/or flow of the Sacandaga and Hudson Rivers at appropriate locations;
- determine all other project flows, including flows through the turbines, gates, weirs or other flow regulating structures;
- determine headpond and tailwater elevations as needed; and
- provide an appropriate means of independent verification of minimum or base flow levels by the NYSDEC, USFWS and the public.

All gauging and ancillary equipment required by the monitoring plan, including headpond and tailwater gages, shall be made operational and fully calibrated within 12 months of license issuance and acceptance, with the exception that monitoring of the Stewarts Bridge Project base flow will be commensurate with the implementation of the base flow on January 1, 2013. Monitoring for the base flow at Stewarts Bridge shall be done in the tailrace, shortly downriver, or through a calibrated orifice measurement. A staff gage, calibrated to conspicuously show the appropriate base flow levels, will also be provided for independent verification by the public.

Erie shall keep accurate and sufficient records of the impoundment elevations and all project flows to the satisfaction of NYSDEC and shall provide such data in a format

and at intervals as required by NYSDEC. All records will be made available for inspection at Erie's principal business office within New York State within five (5) business days, or will be provided in written form within 30 days of Erie's receipt of a written request for such records by any of the Parties. Furthermore, Erie will provide to the NYSDEC a seven-day per week contact person to provide immediate verification of monitored flows and responses to questions about abnormal or emergency conditions. Erie will also consider the feasibility of Internet type posting of these records.

The monitoring plan will contain provisions for the installation of staff gages at appropriate locations to permit independent verification of headpond and tailwater elevations to the nearest 0.1 foot. Staff gages will be visible to the general public. Stage *versus* flow ratings shall be calibrated when rating changes occur, and maintained for the subject projects. Access to staff gages shall be provided to the NYSDEC, USFWS and, in the case of staff gages at Erie's facilities on the Sacandaga River, to Fulton and Saratoga Counties, and/or their authorized representatives.

Erie shall keep accurate and sufficient record of the following incidents:

- any uncontrollable station outage that causes a reduction in the required base flows at Stewarts Bridge or Feeder Dam;
- any uncontrollable station outage that causes a reduction in the required minimum flow at Sherman Island;
- any mis-operation of a flow release device which causes a reduction in the required base flows at Stewarts Bridge or required minimum flow at Sherman Island.

Erie will consult with the NYSDEC to develop a plan for reporting these incidents. For the Sherman Island development and Feeder Dam project, the reporting plan shall be finalized within 12 months of FERC license issuance and acceptance. For the Stewarts Bridge project, the reporting plan shall be finalized at least 6 months prior to the implementation date for base flows, *i.e.*, at least 6 months prior to January 1, 2013.

2.13 Regulating District's Responsibilities For Flow And Water Level Monitoring

The Regulating District shall, on a monthly basis, prepare and publish a report of daily Great Sacandaga Lake elevations, inflows to Great Sacandaga Lake and flows of the Hudson River. The Regulating District shall, at its cost and expense, maintain equipment, facilities and personnel sufficient to generate the data for the monthly report. The Regulating District will also provide FERC, NYSDEC, NYRU and licensees on the Hudson River with notification if the Fort Edward USGS gage is out of operation for more than two weeks.

2.14 Recreation Facilities and Consultation

Existing recreation facilities at the Hudson/Sacandaga projects will be retained. The Parties agree that proposed recreational facilities specified in Sections 4.0 through 7.0 are generally consistent with, but supersede, proposals contained in the new FERC license applications for, and/or AIR responses filed with, FERC for the E.J. West, Stewarts Bridge, Hudson River and Feeder Dam Hydroelectric Projects. Existing and additional recreational facilities will be provided as specified in Sections 4.0 through 7.0 and in accordance with the schedule set forth in Table 2.1-1. Existing and additional recreational facilities, and access thereto, are, or will be, located on lands currently owned by Erie, or in the public way, unless otherwise noted. Unless specific provisions in Sections 4.0 through 7.0 of this Settlement require otherwise, any access granted or acquired for recreational purposes will be for general public use. The plans for improved and new recreation facilities will be developed in consultation with individual members of the River Basin Council, as appropriate, before submittal to FERC.

2.15 Settlement Offer Amendments

The parties agree that, except as provided herein, nothing in this Settlement Offer is intended to limit or restrict the ability of any party to seek an amendment to this Settlement Offer during the effective period of the license(s) with respect to matters not addressed in the license(s). Any Party seeking such an amendment may do so upon presenting substantial evidence that a material change in circumstances has occurred

which provides good cause for seeking the amendment. Any such amendment proposal shall not be materially inconsistent with any license articles or the obligations of the Licensees pursuant to their licenses. Any Party proposing such an amendment to this Settlement Offer shall provide all Parties with at least 30 days written notice of the proposed amendment, and, if requested to do so by any Party, shall consult with the Parties regarding the proposed amendment for at least another 30 days. All Parties must agree to the proposed amendment for the amendment to be effective. Any Party that abstains may not object to and will be bound by any amendment in which all other Parties concur. After such notice and consultation, if all Parties concur with the proposed amendment, the Party making such proposal shall secure signed agreements to the amendment. The Licensees will file the amendment with FERC for informational purposes.

2.16 Flow Tolerances

All instream flows defined in subsections 5.3 and 6.3 are considered nominal flows. It is recognized that the actual release at any given time may be slightly above or below the value indicated. The degree to which a flow will be above or below the value indicated is a function of headpond elevation as a result of allowable impoundment fluctuations. Erie shall derive appropriate methods for the provision of instream flows at the Stewarts Bridge and Sherman Island developments, based upon the midpoint of the normal impoundment fluctuation of each development. The range of flows is provided within subsections 5.3 and 6.3.

3.0 OPERATION OF GREAT SACANDAGA LAKE

3.1 Introduction

The Parties have agreed to a plan for the operation of Great Sacandaga Lake (GSL) that is based on maintaining certain maximum and minimum lake elevations, and to following an annual guide curve for lake levels that is intended to meet a number of resource objectives in consideration of the storage capacity of the lake.

The operation of GSL except as provided in Section 3.9 below, will begin upon issuance to and acceptance of a license by the Regulating District. Table 3.0-1 provides a summary of the operational enhancements to be provided by the Regulating District for Great Sacandaga Lake.

3.2 Operating Objectives for Great Sacandaga Lake

The Regulating District will operate the Great Sacandaga Lake to achieve the following objectives while maintaining the goal of controlling floods on the Hudson River:

- Maintaining the lake at the targeted elevations during the late winter consistent with the use of storage for flow augmentation;
- Providing flows in the Hudson River to maintain water quality and fish habitat;
- Targeting higher than current lake elevations to enhance fall lake recreation;
- Minimizing energy losses to affected hydro projects by the aggressive use of storage while maintaining the other objectives;
- Enhancement of whitewater recreation on the Sacandaga River.
- Providing base flows in the Sacandaga River.

Table 3.0-1
Summary of Settlement Offer Measures for Great Sacandaga Lake

| Issue | Description | Time Frame for Implementation |
|--|---|--|
| Winter Drawdowns | 748 feet | From License Issuance and Acceptance to 06/01/10 |
| | 749 feet | 06/02/10 to 06/01/20 |
| | 750 feet | 06/02/20 to License expiration |
| Operation to Target Flow Augmentation Needs on the Upper Hudson River Just Below the Confluence with the Sacandaga River | In accordance with Table B (p. 38) | From License Issuance and Acceptance to 06/01/13 |
| | In accordance with Table C (p. 38) | From 06/02/13 to License Expiration |
| Targeted Maximum Flows in Hudson River Below the Confluence with the Sacandaga River for Aggressive Use of Storage | In accordance with Table D (p. 39) | From License Issuance and Acceptance to License Expiration |

When flows are being released from Great Sacandaga Lake, the Regulating District will ensure that releases from Great Sacandaga Lake will allow Erie to provide a base flow and whitewater flows below the Stewarts Bridge Project, a minimum average daily flow below the confluence of the Hudson and Sacandaga Rivers, and a base flow below the Feeder Dam Project.

3.2.1 Level Curves

Four level curves have been developed to express the annual constraints on lake elevations in Great Sacandaga Lake. The four Level Curves are designated as follows:

- Level Curve 1 is considered the bottom of available storage; Great Sacandaga Lake may be drawn below this Level Curve only under circumstances detailed in this agreement; Level Curve 1 is defined as elevation 756 from May 1 through Labor Day, then linearly interpolated to 740 on October 15 and maintained at 740 feet through March 31 of the next year, and then linearly interpolated back to 756 on May 1;
- Level Curve 2 represents the top of buffer storage; buffer storage between Level Curves 1 and 2 is primarily reserved to augment flows on the Hudson and Sacandaga Rivers for water quality, and to provide whitewater flows;
- Level Curve 3 represents the annual Guide Curve the Regulating District will follow over the course of any given year, subject to balancing inflow to Great Sacandaga Lake with other operating constraints. Level Curve 3 represents the top of conservation storage. Storage between Level Curves 2 and 3 is used to augment flows on the Hudson and Sacandaga Rivers for water quality and power generation, as well as to provide white water flows.

- Level Curve 4 represents the top of the flood pool and is set at elevation 773 throughout the year; lake levels will approach this elevation only in accordance with the Regulating District's responsibility to utilize the storage capability of the lake to control flooding on the Hudson River.

The Settlement allows for a transition in Level Curve 3 from a targeted elevation for maximum winter drawdown of 748 at the time of license issuance, elevation 749 starting on June 2, 2010, and elevation 750 starting on June 2, 2020. Figures A through C show the Level Curves for each of the three time periods in the transition period.

Shown in Appendix E is a look-up table that shows the relationship between lake Level Curves and USGS datum for Great Sacandaga Lake elevations, including intermediate levels 1.2, 1.5, 2.5, etc., which pertain to operating guidelines herein.

3.3 Winter Drawdowns

During the winter, the maximum drawdown of Great Sacandaga Lake occurs typically in late March or April and the targeted elevations for maximum winter drawdown for Level Curve 3 are shown in Table A (p. 37). Under certain circumstances, the Regulating District will be allowed to operate Great Sacandaga Lake below the targeted elevation for maximum winter drawdown as described further below.

In all cases, drawdowns below the targeted elevation for maximum winter drawdown will be for the minimum duration necessary and the lake elevation will be restored above the target level as soon as possible after the circumstances requiring the drawdown have passed.

Under the following circumstances, prior notification to the NYSDEC will not be required for drawdowns below the targeted elevation for winter drawdown:

- Any emergency situations related to dam safety, human life and property, or rescue activities;
- The need for flow augmentation objectives as described in Subsection 3.4.

3.3.1 Consultation Requirements Prior to Drawdowns Below the Targeted Elevation for Maximum Winter Drawdowns

Under the following circumstances, consultation with NYSDEC will be required prior to drawdowns below the targeted elevation for winter drawdown:

- Maintenance, repair or reconstruction of the Conklingville Dam, for which NYSDEC approval will be required;
- Existence of a water equivalent of 8.6 inches at the first March snow survey may warrant the provision of more storage for flood control purposes. In the event that the water equivalent trigger is met, the Regulating District will consult, in advance of drawing the lake below the target elevation, with NYSDEC Regional Director for Region 5.

The Regulating District is required to implement the following notification and consultation steps prior to drawdowns below the targeted elevation for maximum winter drawdowns if circumstances described above warrant:

- The Regulating District must consult in advance with appropriate NYSDEC Region 5 staff, Fulton and Saratoga County staff, and Erie's staff regarding the need for drawdowns below the targeted elevation for maximum winter drawdowns for flood protection purposes, describing the need for the drawdown, the approximate drawdown level needed, and the approximate duration of the drawdown. It will be the responsibility of the NYSDEC to notify

the USFWS and APA of the request. To the extent possible, the decision on drawdown level will be determined by consensus of these parties. Documentation of consultation among the Regulating District, NYSDEC, Fulton and Saratoga Counties and Erie on the justification for the drawdown will be prepared and maintained on file by the Regulating District and NYSDEC, with a copy supplied to Erie and Fulton and Saratoga Counties within 30 days of the occurrence. In the absence of consensus, the Regulating District and NYSDEC will make the final determination on the level of drawdown.

- Advanced notification and consultation with appropriate NYSDEC, Fulton and Saratoga Counties and Erie staff will not be deemed necessary if it would impair the Regulating District's ability to address immediate dangers relating to dam safety, human life and property, or rescue activities. However, NYSDEC, Fulton and Saratoga Counties and Erie will be notified within 24 hours of the commencement of the drawdown and the related emergency. This notification will be followed within the subsequent 24 hours by submission to NYSDEC of a description of the need for the drawdown, any related emergency actions and the reasons why the situation is an emergency. Documentation of the notification will be maintained on file by the Regulating District and NYSDEC, with a copy supplied to Erie and Fulton and Saratoga Counties within 30 days of the occurrence.

3.4 Operation for Flow Augmentation

The Regulating District will allocate sufficient daily water volume releases from Great Sacandaga Lake to meet minimum average daily flow requirements on the Hudson River just below the confluence with the Sacandaga River and to help meet the 1,500 cfs instantaneous Hudson River base flow requirement below Feeder Dam. The Regulating District will use the minimum average daily flows shown in Tables B (p. 38) or C (p. 38), as adjusted in Section 3.4.2, to help meet these objectives.

3.4.1 Drawdown Exceptions to Level Curve 1

The Regulating District may draw Great Sacandaga Lake below Level Curve 1 only in accordance with the exceptions described herein. In all cases, drawdowns below Level Curve 1 will be for the minimum duration necessary and the lake elevation will be restored above Level Curve 1 as soon as possible after the circumstances requiring drawdown have passed. As soon as Great Sacandaga Lake rises above Level 1, Hudson River flows shall be restored per Table B or C and subsection 3.4.2, below, as applicable. Reasons for drawing below Level Curve 1 may include, but not necessarily be limited to the following:

- Maintenance, repair or reconstruction of the Conklingville Dam;
- Any emergency situations related to dam safety, human life and property, or rescue activities;
- The need for flow augmentation because of critical low flows in the Hudson River which adversely affect water quality conditions (see subsection 3.4.3 below for consultation procedures for drawdowns below Level Curve 1 for flow augmentation).

3.4.2 Drawdown Exceptions during the Champlain Canal Navigation Season

During the Champlain Canal Navigation Season (approximately May 1 through mid-November), if the elevation of Great Sacandaga Lake drops below level 1.2 (interpolated between Level Curves 1 and 2) and an interim minimum average daily flow has not been invoked per subsection 3.4.3 (see below), the minimum average daily flow on the Hudson River just below the confluence with the Sacandaga River (see row 1 of Table B or C, p. 38) shall be increased by the flow being diverted from the Hudson River to the Feeder Canal. The resulting minimum average daily flow will remain in effect until either Great Sacandaga Lake rises above level 1.2 or an interim minimum average daily flow is established per subsection 3.4.3.

3.4.3 Consultation on Drawdown Exceptions for Flow Augmentation

If the elevation of the Great Sacandaga Lake reaches Level 1.2 (interpolated between Level Curves 1 and 2) at any time and the lake elevation is continuing to drop, the Regulating District will, within 48 hours of the lake reaching Level 1.2, notify the NYSDEC. At any time between Memorial Day and Labor Day, the Regulating District shall also provide general, public notification in the event an emergency occurs that will require Great Sacandaga Lake to be drawn below level 1.2. Notification shall be provided within 48 hours following commencement of the emergency drawdown. Within seven working days of the lake reaching level 1.2, the NYSDEC and Regulating District will consult with Erie, the USFWS, the APA and Fulton and Saratoga Counties to establish an interim minimum average daily flow that will be invoked should the lake actually reach Level 1.0. To the extent possible, the decision on an interim minimum average daily flow shall be determined by consensus among the participants. In the absence of consensus, the NYSDEC will, within the seven-day period described above, make the final determination on the minimum average daily flow that will be invoked should the lake actually reach Level 1.0. As soon as the Lake rises above Level 1.0, the minimum average daily flow shall be restored as per Table B or C (p. 38), as applicable.

The NYSDEC, The Regulating District, and the consulted Parties shall consider the following factors in establishing the interim minimum average daily flow:

- The goal of minimizing the extent and duration of lake drawdown below Level Curve 1;
- Water quality conditions on the Hudson River at the time;
- Natural inflow to Great Sacandaga Lake
- Natural flow in the Hudson River above Hadley;
- Minimum base flow in the Sacandaga River;

- The quantity of flow being diverted from the Hudson River to the Feeder Canal;
- Other meteorological circumstances (e.g., precipitation and temperature).

In the event an interim minimum average daily flow is implemented that may take Great Sacandaga Lake below Level Curve 1, periodic consultation shall occur thereafter for NYSDEC to determine whether changes in conditions warrant raising or lowering the interim minimum average daily flow. Consultation shall continue until Great Sacandaga Lake elevation is restored to above level 1.2.

3.5 Operation for Fall Recreation

To facilitate lake recreation through Columbus Day, the Regulating District will regulate Great Sacandaga Lake in accordance with Level Curve 3. A minimum lake elevation of 760 feet on October 15 as shown on Level Curve 3 is considered a target elevation, and the Regulating District may operate Great Sacandaga Lake below elevation 760 feet under the following conditions:

- to maintain flow augmentation needs on the Hudson River as a daily average of 1,760 cfs below Feeder Dam and an instantaneous flow of no less than 1,500 cfs below Feeder Dam using the target flows shown on Tables B and C and the provisions of Subsection 3.4.2;
- to maintain Sacandaga River Base Flows;
- to maintain the whitewater demand schedule.
- to address other conditions as requested by NYSDEC.

3.6 Operation for Aggressive Use of Storage

For the purpose of minimizing energy losses to affected downstream hydroelectric projects, the Regulating District will make every reasonable attempt to limit water releases from the Great Sacandaga Lake to not exceed the target maximum flows in the

Hudson River below the confluence with the Sacandaga River, based on the relationship shown in Table D.

3.6.1 Exceptions to Operation for Aggressive Use of Storage

In cases where exceedance of the target maximum flows on the Hudson River is needed, the Regulating District will restore the Hudson River to below the maximum flows as soon as possible after circumstances requiring the exceedance have passed. Reasons for exceeding the maximum flows shown in Table D include, but are not limited to, the following:

- Maintenance, repair or reconstruction of the Conklingville Dam;
- Observation of lake elevations rising above elevation 771 and anticipation of unusual meteorological conditions that may result in flooding around Great Sacandaga Lake above Level Curve 4;
- Any emergency situations related to dam safety, human life and property, or rescue activities.

3.6.2 Consultation to Implement Exceptions to Operation for Aggressive Use of Storage

The following notification and consultation provisions for exceedance of target maximum flows in the Hudson River will be undertaken as circumstances warrant:

- The Regulating District will consult with appropriate NYSDEC Region 5 staff and Fulton and Saratoga Counties and downstream hydroelectric project owners and municipalities regarding the need to exceed the maximum flows shown on Table D. Consultation will include the need for the exceedance, estimation of the consequences to downstream properties and hydro facilities as a result of the exceedance, and an estimation of the approximate duration of the exceedance. Documentation of the consultation

will be maintained on file by the Regulating District, with copies to NYSDEC, Fulton and Saratoga Counties, Erie and affected downstream entities within 30 days.

- Consultation with NYSDEC, Fulton and Saratoga Counties and downstream hydroelectric project owners and municipalities will not be deemed necessary where consultation would impair the Regulating District's ability to address immediate dangers relating to dam safety, human life and property, or rescue activities. However, NYSDEC, Fulton and Saratoga Counties and affected downstream entities will be notified as soon as possible of the emergency situation and its expected duration. In such emergency circumstances, the Regulating District will prepare a report discussing the rationale and circumstances for exceeding the target flows. The report will be maintained on file by the Regulating District and copies will be provided to NYSDEC, Fulton and Saratoga Counties, Erie and affected downstream hydroelectric project owners and municipalities within 30 days of the occurrence.

3.7 Operation for Whitewater Recreation

For the purpose of enhancing whitewater recreation, the Regulating District will operate the Great Sacandaga Lake to provide the daily volume of water, if available, needed to sustain the whitewater demand flow in the Sacandaga River below Stewarts Bridge dam as provided in Section 5.5.1.4 of this settlement document.

3.8 Operation for Base Flows in the Sacandaga River

The Regulating District shall provide sufficient flow volumes to facilitate the release of an instantaneous base flow, beginning in 2013, to the Sacandaga River below the Stewarts Bridge Project as described in Section 5.3 below. In the event neither of the two

turbine/generator units at the E.J. West Project are operating, the Regulating District and Erie will cooperate to insure that base flows are maintained in the Sacandaga River without violating impoundment fluctuation restrictions at the Stewarts Bridge Project.

3.9 Interim Measures

Until the new license is issued and accepted, the Regulating District shall maintain status quo operation of the Great Sacandaga Lake with the exception of the following interim measures.

The Regulating District shall provide the following interim measures for a period not to exceed two years from the date this Settlement Offer is executed and filed with the FERC, and thereafter once a license has been issued and accepted.

3.9.1 Interim Operation of Great Sacandaga Lake for Fall Recreation

For interim enhancement to fall recreation, the Regulating District will strive to keep the Great Sacandaga Lake level at or above elevation 760 through October 15.

3.9.2 Interim Operation of Great Sacandaga Lake for Aggressive Use of Storage

To the extent practicable, the Regulating District will limit water releases from the Great Sacandaga Lake, to approach but not exceed the targeted maximum flows on the Hudson River below the confluence with the Sacandaga River based on the relationship shown in Table D.

| Table A: Great Sacandaga Lake Target Elevation for Winter Maximum Drawdown | |
|---|--|
| Implementation Schedule | Targeted Elevation for Maximum Drawdown |
| From License Issuance and Acceptance ¹ to June 1, 2010 | 748 feet |
| From June 2, 2010 through June 1, 2020 | 749 feet |
| From June 2, 2020 through License Expiration | 750 feet |

¹For purposes of the settlement, the meaning of "license issuance and acceptance" is set forth in § 1.14.

Table B: Operation of Great Sacandaga Lake to Target Flow Augmentation Needs on the Hudson River Just Below the Confluence with the Sacandaga River (from License Issuance to June 1, 2013)

| Great Sacandaga Level | Minimum average daily flow target on the Hudson River just below the confluence with the Sacandaga River (cfs) |
|--------------------------|--|
| 1.00- 1.19 ¹ | 1,500 ⁴ |
| 1.20-1.50 ^{2,3} | 1,760 |
| 2.50-3.00 ³ | 2,250 |
| 3.50 ³ | 3,000 |
| 4.00 ³ | 4,000 |

Table C: Operation of Great Sacandaga Lake to Target Flow Augmentation Needs on the Hudson River Just Below the Confluence with the Sacandaga River (from June 2, 2013 to License Expiration)

| Great Sacandaga Level | Minimum average daily flow on the Hudson River just below the confluence with the Sacandaga River (cfs) |
|------------------------|---|
| 1.00-1.19 ¹ | 1,500 ⁴ |
| 1.20-2.50 ³ | 1,760 |
| 3.00 ³ | 2,000 |
| 3.50 ³ | 3,000 |
| 4.00 ³ | 4,000 |

¹ NYSDEC and the Regulating District will confer in accordance with Section 3.4.2 to determine the appropriate flow that will be provided below Level Curve 1.00.

² For Levels above 1.50, the corresponding minimum average daily flow targets on the Hudson River exceed the 1,760 cfs required for water quality. The flow targets shown are designed to increase hydro operating efficiency at Hudson River hydro projects (i.e., generation).

³ Flows between specified ranges are to be interpolated.

⁴ See exception at subsection 3.4.2.

Table D: Targeted Maximum Hudson River Flow Below the Confluence with the Sacandaga River

| Great Sacandaga Lake Elevation (feet) | Targeted Maximum Flow on the Hudson River below the confluence with the Sacandaga River (cfs) |
|--|--|
| 735.00-755.00 | 6,000 |
| 755.01-769.00 | 8,000 |
| 769.99 | 10,000 |
| 770.00 | 20,000 |
| 773.00 | 26,000 |
| 776.0 and above | 32,000 |

Note: For those GSL elevations not shown above, the targeted maximum allowable flow should be linearly interpolated.

Great Sacandaga Lake Level Curve with Targeted Maximum Winter Drawdown Elevation of 748
(Effective from License Issuance and Acceptance to June 1, 2010)

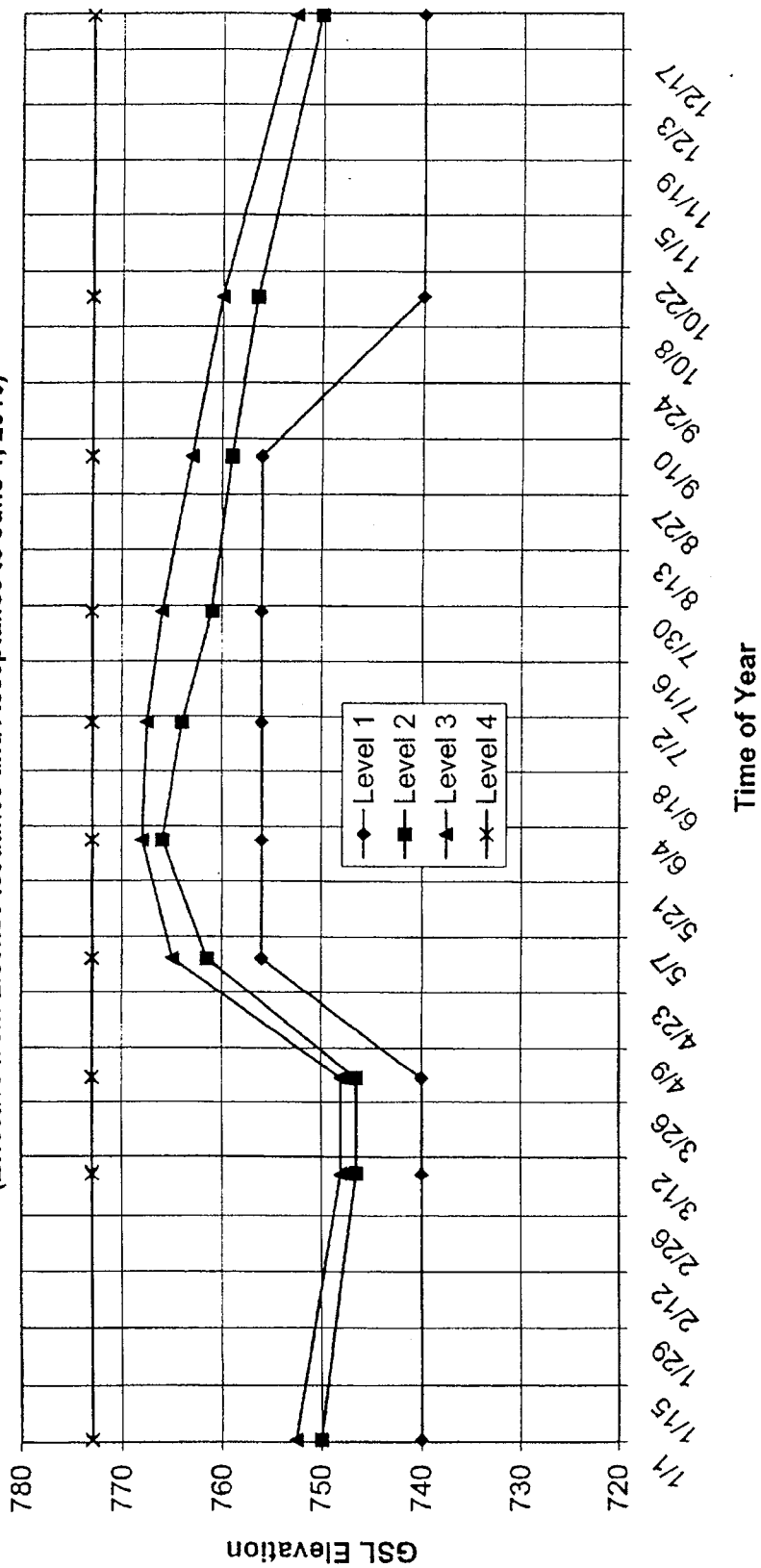


Figure A
Level Curves to be used by the
Regulating District to operate
Great Sacandaga Lake from License Issuance
and Acceptance to June 1, 2010.

Great Sacandaga Lake Level Curve with Targeted Maximum Winter Drawdown Elevation of 749
(Effective from June 2, 2010 through June 1, 2020)

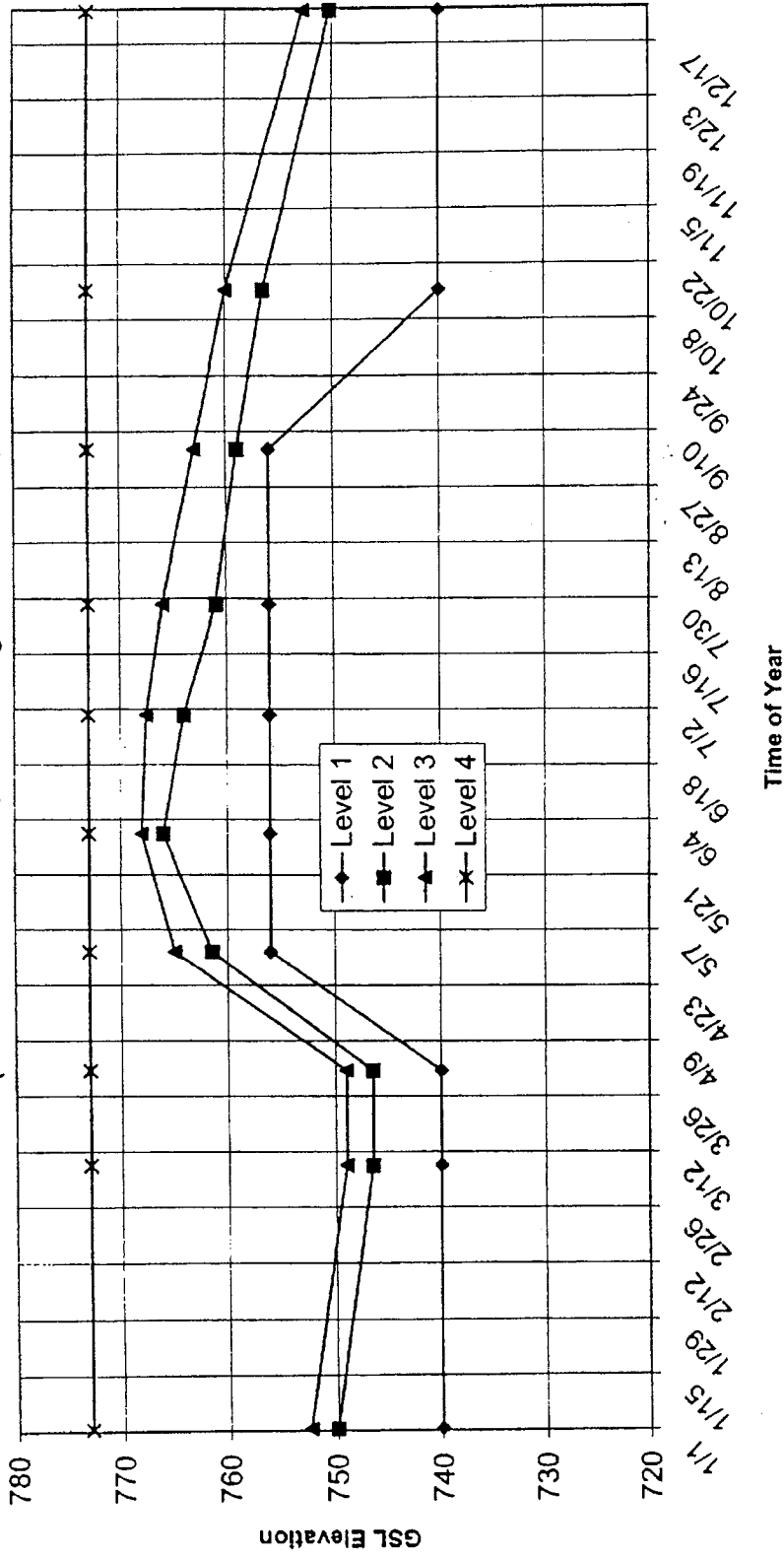


Figure B
Level Curves to be used by the
Regulating District to operate
Great Sacandaga Lake from June 2, 2010
through June 1, 2020

Great Sacandaga Lake Level Curve with Targeted Maximum Winter Drawdown Elevation of 750
(Effective from June 2, 2020 through License Expiration)

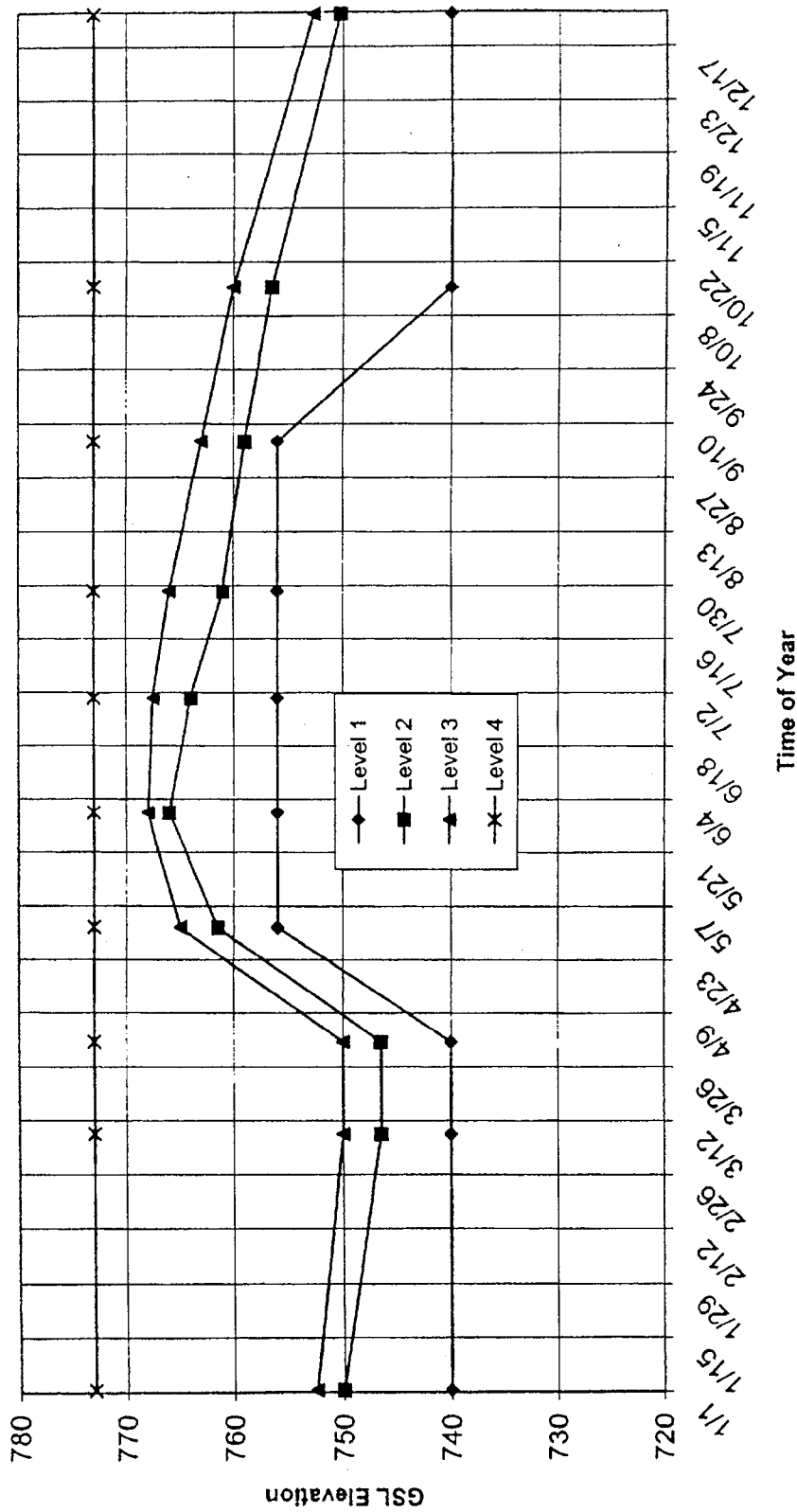


Figure C
Level Curves to be used by the
Regulating District to operate
Great Sacandaga Lake from June 2, 2020
through License Expiration

4.0 E. J. WEST PROJECT, FERC NO. 2318

The provisions of this Settlement Offer for enhancement measures at the E. J. West Project are summarized in Table 4.0-1.

Table 4.0-1
Summary of Settlement Offer/Enhancement Measures at the E.J. West Project

| Issue | Description | Timeframe for Implementation |
|-----------------------|---|---|
| Fish Protection | Full 1" trashrack overlays. | 2002* |
| Recreation Facilities | <ul style="list-style-type: none">• Improve informal overlook on Route 4• Portage around dam | Within 18 months of License Issuance & Acceptance |

* Fish protection at E.J. West will be installed no later than 12/31/02, regardless of license issuance date.

4.1 Project Operation

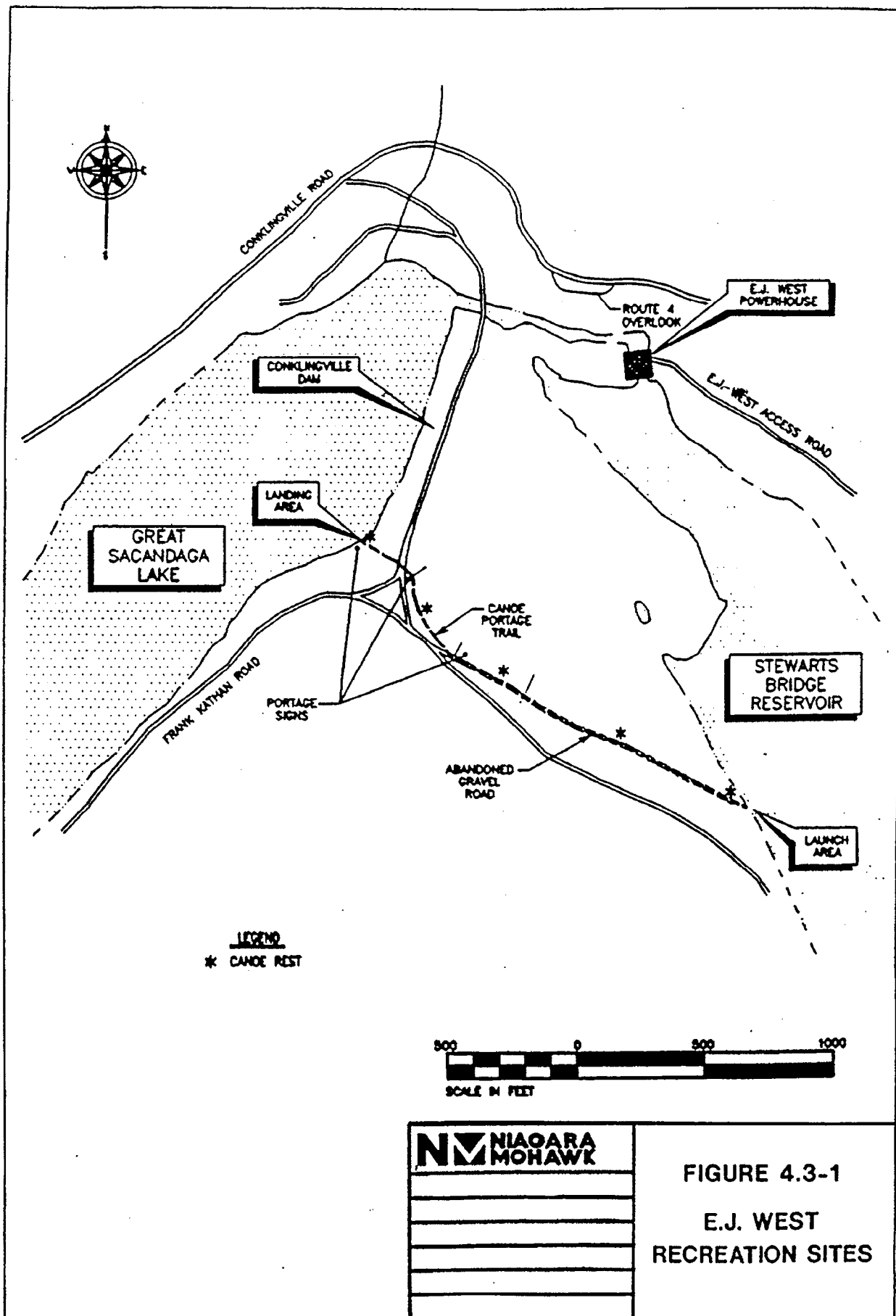
Erie will operate the E.J. West Project in a manner consistent with operation of Great Sacandaga Lake by the Regulating District and in a manner consistent with Erie's obligations for flow management below the Stewarts Bridge Project (see Section 5.3).

4.2 Fish Protection

In order to provide protection against entrainment and mortality of resident fish in Great Sacandaga Lake through the turbines of the project, Erie will install full trashrack overlays with a maximum clear spacing of one inch by December 31, 2002, regardless of the date of license issuance. Downstream movement facilities are not to be provided in order to maintain resident fish populations in the lake.

4.3 Recreational Facilities

Erie will provide a scenic overlook and a canoe portage within 18 months of the issuance and acceptance of a new license for the project as described below. See Figure 4.3-1 for diagrams of the proposed facilities.



4.3.1 Route 4 Overlook

An informal pull-off and overlook, located on County Route 4 on land owned by Saratoga County, adjacent to Conklingville Dam, will be improved as described in Exhibit E.5(v)A.2.b of the Revised Application for New License (p. E.5-48). The existing pull-off will be paved, and interpretive signage will be added at the site, including a location map and appropriate text. The design and schedule for these improvements will be submitted to Saratoga County for review and approval prior to finalizing the design and submitting it to the Commission for approval.

Ownership and maintenance of the pull-off and overlook will remain with Saratoga County. These facilities are not to be included in the Project Boundary.

4.3.2 Portage Around Dam

A canoe portage trail around the south side of Conklingville Dam will be provided to link Great Sacandaga Lake with the Stewarts Bridge Reservoir, as described in Exhibit E.5(v)A.2.a. of the Revised Application for New License (p. E.5-43). The portage trail will be approximately 1,800 feet long. The portage trail, as well as the take-out and put-in landings, will be designed and located to minimize the potential for soil erosion. Signage will be provided to indicate the location of the take-out area. This portage trail will be largely on State lands administered by the Regulating District and partly on Erie's land within the project boundary for the Stewarts Bridge Project.

4.4 Relicensing Proposals Withdrawn

Provisions are included in the Stewarts Bridge agreements (see Section 5.4 below) to discourage intrusions on bald eagle wintering habitat during the winter. These provisions replace those formerly proposed for the E.J. West Project.

5.0 STEWARTS BRIDGE PROJECT, FERC NO. 2047

The provisions of this settlement offer for enhancement measures at the Stewarts Bridge Project are summarized in Table 5.0-1.

Erie will operate the Stewarts Bridge Project in a manner consistent with the operation of Great Sacandaga Lake by the Regulating District and in a manner consistent with Erie's obligations for flow management below the Stewarts Bridge Project, including the provision of base flows (Section 5.3 below) and whitewater flows (Section 5.5.1 below).

5.1 Reservoir Fluctuations

Upon license issuance and acceptance, and absent approval for alternative operations from NYSDEC, Erie will limit all normal daily drawdowns and fluctuations of the Stewarts Bridge Reservoir to a maximum of one foot (*i.e.*, between elevations 704.0 and 705.0 USGS). Erie will also discontinue the annual spring maintenance drawdown of approximately 15 feet upon license issuance and acceptance.

5.2 Fish Protection and Downstream Movement

In order to provide protection against entrainment of resident fish into the project turbines, Erie will install full trash racks overlays with maximum clear spacing of one inch in 2008. The date of installation may be changed on mutual consent of USFWS, NYSDEC and Erie. To afford a route of downstream movement for fish, Erie will discharge a continuous flow of 25 cfs through a modification to one of the Tainter gate sections, beginning at the time the overlays are installed. The 25 cfs fish movement flow will be considered a part of the base flow discharged from the project during non-generation periods (see Section 5.3 below).

5.3 Base Flows

Erie shall maintain an instantaneous base flow immediately below the Stewarts Bridge Dam based on the schedule shown in Table 5.3-1.

Table 5.0-1

Summary of Settlement Offer Measures at the Stewarts Bridge Project

| Issue | Description | Timeframe for Implementation | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--------------------------------------|--|---|---|--------------------------------------|---|-----------------------------------|--|--------------------------------------|--|--------------------------------------|--|--------------------------------------|--|----------|---|----------|---|----------|---|-----|---|-----|---|-----------|---|-----|---|-----|---|---------|--|----------|--|----------|--|-------|---|-------|---|-------|---|--|--|------------------------------------|
| Impoundment Fluctuation | 1' daily 1/1 – 12/31 No annual drawdown for maintenance on E.J. West units. | Upon License Issuance & Acceptance | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Sacandaga River Base Flows | <u>GSL Elevation</u> > 752 feet 749 – 752 feet < 749 feet | <u>Base Flow</u> 350 (349-351) cfs 300 (299-301) cfs 300 (299-301) cfs or inflow, whichever is lower | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <u>GSL Elevation</u> > 752 feet 750 – 752 feet < 750 feet whichever is lower | <u>Base Flow</u> 350 (349-351) cfs 300 (299-301) cfs 300 (299-301) cfs or inflow, whichever is lower | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Fish Protection | Full 1" trashrack overlays. | 2008 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Downstream Fish Movement | 25 cfs continually for passage, 1/1 – 12/31 Note: 25 cfs would be included in base flow during non-generating periods. | 2008 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Whitewater Program | <table><tr><th colspan="2">Weekends <u>June 1-22</u></th><th colspan="2">Daily <u>June 23-Sept. 8</u></th><th colspan="2">Weekends <u>September 9-23</u></th></tr><tr><th colspan="2">GSL Whitewater <u>Level Hours</u></th><th colspan="2">GSL Whitewater <u>Level Hours</u></th><th colspan="2">GSL Whitewater <u>Level Hours</u></th></tr><tr><td>1.0-1.19</td><td>0</td><td>1.0-1.19</td><td>0</td><td>1.0-1.19</td><td>0</td></tr><tr><td>1.2</td><td>4</td><td>1.2</td><td>5</td><td>1.2 -2.35</td><td>3</td></tr><tr><td>2.0</td><td>5</td><td>2.0</td><td>7</td><td>3.0 and</td><td></td></tr><tr><td>2.75 and</td><td></td><td>2.35 and</td><td></td><td>above</td><td>6</td></tr><tr><td>above</td><td>6</td><td>above</td><td>8</td><td></td><td></td></tr></table> | Weekends <u>June 1-22</u> | | Daily <u>June 23-Sept. 8</u> | | Weekends <u>September 9-23</u> | | GSL Whitewater <u>Level Hours</u> | | GSL Whitewater <u>Level Hours</u> | | GSL Whitewater <u>Level Hours</u> | | 1.0-1.19 | 0 | 1.0-1.19 | 0 | 1.0-1.19 | 0 | 1.2 | 4 | 1.2 | 5 | 1.2 -2.35 | 3 | 2.0 | 5 | 2.0 | 7 | 3.0 and | | 2.75 and | | 2.35 and | | above | 6 | above | 6 | above | 8 | | | Upon License Issuance & Acceptance |
| Weekends <u>June 1-22</u> | | Daily <u>June 23-Sept. 8</u> | | Weekends <u>September 9-23</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| GSL Whitewater <u>Level Hours</u> | | GSL Whitewater <u>Level Hours</u> | | GSL Whitewater <u>Level Hours</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1.0-1.19 | 0 | 1.0-1.19 | 0 | 1.0-1.19 | 0 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1.2 | 4 | 1.2 | 5 | 1.2 -2.35 | 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2.0 | 5 | 2.0 | 7 | 3.0 and | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2.75 and | | 2.35 and | | above | 6 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| above | 6 | above | 8 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Project Recreation Facilities | <ul style="list-style-type: none">Whitewater releases and forecastingImprove roads at reservoir recreation areaPortage down improved path, north side of damParking signage along road for fishing accessImpoundment shoreline accessComplete reservoir side of canoe portage | Within 18 Months of License Issuance & Acceptance | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Non-Project Recreation Facilities | <ul style="list-style-type: none">North Side Put-In/Parking AreaSouth Side Take-Out/Parking Area | Within 18 Months of License Issuance & Acceptance | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Table 5.3-1. Base Flow Schedule for Stewarts Bridge

| Great Sacandaga Lake Elevation | Base Flow (cfs) |
|---|--|
| 01/01/13 to 06/01/20 | |
| Greater than or equal to elevation 752 | 350 (349-351) |
| Between elevation 749 and 752 | 300 (299-301) |
| Less than or equal to elevation 749 | 300 (299-301) cfs or inflow ¹ , whichever is less |
| 06/02/20 to License Expiration | |
| Greater than or equal to elevation 752 | 350 (349-351) |
| Between elevation 750 and 752 | 300 (299-301) |
| Less than or equal to elevation 750 | 300 (299-301) cfs or inflow ¹ , whichever is less |
| Other Conditions: | |
| <ul style="list-style-type: none"> • If the Hudson River flow below the Sacandaga River confluence is greater than 25,000 cfs, then the base flow that must be achieved by release is 200 cfs. | |

The base flow schedule in Table 5.3-1 shall be implemented by Erie on January 1, 2013, and shall continue throughout the remaining Stewarts Bridge license term. The base flow will include dam leakage and the fish passage flow so long as the measured flow immediately below the Stewarts Bridge Dam satisfies the criteria in Table 5.3-1.

The base flows shown in Table 5.3-1 are considered nominal flows such that the base flows will vary depending on the allowable one-foot fluctuation in headpond elevation. The base flow of 350 cfs is understood to vary between 349 cfs and 351 cfs. The base flow of 300 cfs is understood to vary between 299 and 301 cfs.

The drainage area difference between the outlet of Great Sacandaga Lake and the Stewarts Bridge outlet is approximately 11 square miles. Base flows can not always be provided from this limited incremental drainage area and there is limited useable storage at Stewarts Bridge. Therefore, the Regulating District shall operate Great Sacandaga Lake to ensure that a base flow at Stewarts Bridge is provided as required in Table 5.3-1. To ensure that each day's base flow requirement is met, the Regulating District shall allocate the necessary volume of water needed to meet the base flow.

¹ Inflow is measured at the Hope USGS gage and adjusted for drainage area only. The drainage area factor is equivalent to the drainage area at Conklingville Dam outlet (1,044 mi²) divided by the drainage area at the Hope gage (491 mi²) or 2.13. Inflow shall not be adjusted for lake evaporation.

The base flow mechanism at Stewarts Bridge will be automated and designed/operated to instantaneously provide the required base flow when the turbine/generator unit is not operating or there is an uncontrolled station outage.

5.4 Recreational Facilities

Erie will provide the recreational improvements and facilities described below as part of the project within 18 months of license issuance and acceptance. See Figures 5.4-1 and 5.4-2 for the recreation sites discussed below.

Erie will continue to permit public access to the shoreline of the Stewarts Bridge Impoundment across Erie's land where project facilities, hazardous areas and existing leases, easements and private ownership along the shoreline do not preclude it. During the winter, Erie will restrict access to the upper end of the Stewarts Bridge impoundment in order to protect bald eagle winter habitat (see Section 4.4 above).

5.4.1 Road Improvements at Reservoir Recreation Area

Erie will improve the road leading to the Stewarts Bridge Recreation area from County Route 4 by filling and regrading the road, and by increasing maintenance activities for the road and other facilities. New signage will be installed at the entrance on County Route 4 and new Americans With Disabilities Act (ADA) compliant picnic tables will be added to replace some of those damaged, destroyed or stolen. Erie will also request that the County Sheriff's Department increase police patrols of the Recreation Area.

5.4.2 Portage Facilities

Erie will improve the canoe portage trail running from the Stewarts Bridge pond take-out along County Route 7 at the reservoir's edge to the North Side Put-In Area described in section 5.5.2.2.1, which will serve both whitewater access and canoe portage purposes. Signage will be installed to mark the location of the Stewarts Bridge pond take-out and the North Side Put-In Area and access trail to the Sacandaga River below the dam to discourage use of the maintenance road

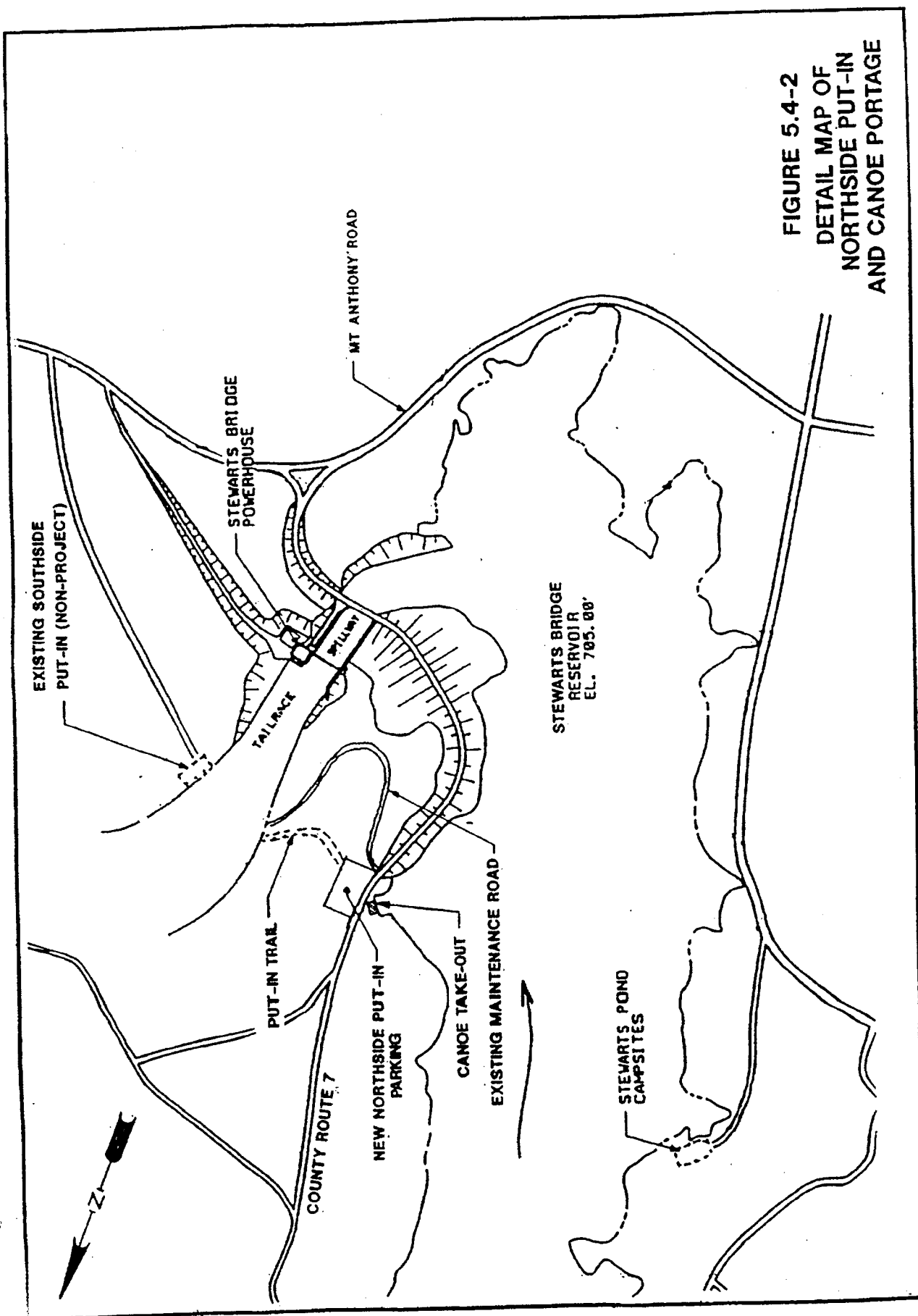


FIGURE 5.4-2
DETAIL MAP OF
NORTHSIDE PUT-IN
AND CANOE PORTAGE

282-027-96-09 3/99

that leads from Route 7 to the put-in area. See Figure 5.4-2 for details of Portage and Parking Facilities.

5.4.3 Parking for Fishing Access Along the Sacandaga River

Erie will provide signage along County Route 4 to indicate that parking along the road is for fisherman access to the river only and to indicate that access for whitewater boating should be only through the River Manager or at the North Side Put-In.

5.5 Whitewater Program Elements

The following discussion of elements of the Whitewater Program differentiate those features which are intended to be part of the Stewarts Bridge Project, and those which are intended to remain outside the project license as non-project features.

5.5.1 Project Features

The following components of the Whitewater Program will be initiated upon issuance and acceptance of a new license for the project. Signatories to this settlement offer agree that whitewater operations and flows defined in this settlement offer should be included in new licenses for the subject project. Signatories agree to work cooperatively in an effort to achieve this objective.

5.5.1.1 Flow Releases

Flow releases from the Stewarts Bridge powerhouse for purposes of the Whitewater Program are agreed to be 4,000 cfs, when available. Erie and/or the Regulating District shall have the right to change flow release schedules for the Whitewater Program under emergency circumstances. The Sacandaga Whitewater Advisory Council (see Section 8.2.4 below) may annually modify the schedule for pre-scheduled releases described in Section 5.5.1.3 below, consistent with the diverse goals and objectives of the Sacandaga Whitewater Recreation Area (SWRA). Such

schedule modifications by the Advisory Council shall not increase the number of weekday and weekend releases described in Section 5.5.1.3 below. Any modification to the pre-scheduled release plan by the Advisory Council shall be communicated to Erie and Regulating District prior to May 15 in each year when a modification is proposed.

5.5.1.2 Core Hours of Whitewater Releases

Erie shall provide daily Stewarts Bridge releases of approximately 4,000 cfs when available in accordance with the schedule shown in Table 5.5.1-1. Daily releases shall be continuous from start to finish such that there are no on/off cycles during a given day unless required for water quality releases. Releases shall be scheduled so as to cover the core hours from 11:00 a.m. to 2:00 p.m. subject to the constraints discussed in the paragraph below. For purposes of settlement, core hours means hours covered by operation. Core hours do not necessarily represent a mid-point of operations.

5.5.1.3 Prescheduled Releases

On one (1) Tuesday in June, two (2) Tuesdays in July and one (1) Tuesday in August [total of four (4) Tuesdays], Erie shall provide pre-scheduled releases of approximately 4,000 cfs from Stewarts Bridge from 11:00 a.m. to 6:00 p.m. so as to guarantee a minimum of four (4) late afternoon/early evening whitewater opportunities. If there is insufficient flow available to provide the pre-scheduled release, then it will be rescheduled for another weekday within the same whitewater season. Rescheduling of releases will not result in any more than two weekdays per month of these scheduled releases during the period June through August. Any rescheduled days over and above this will be scheduled in September of the same whitewater season.

On a total of four (4) Saturdays during the period of July 1 through August 31, Erie shall provide pre-scheduled releases of 4000 cfs from Stewarts Bridge from 11:00 a.m. to 5:30 p.m. to provide late afternoon whitewater opportunities for weekend users of the SWRA. If there is insufficient flow available to provide the pre-scheduled release, then it will be rescheduled for another Saturday within September of the same whitewater season.

Except as noted in the pre-scheduled releases listed above, Erie retains flexibility to schedule operations (releases) during the whitewater recreation period from 9:00 a.m. to 8:00 p.m., where practical, in accordance with forecasted peak market energy demands.

5.5.1.4 Whitewater Demand Schedule

Erie will provide whitewater flows of approximately 4,000 cfs for a guaranteed number of hours each day, which is contingent on the elevation of Great Sacandaga Lake as shown in Table 5.5.1-1. In general, the higher the lake elevation, the longer duration of whitewater flows. Alternatively, the lower the lake elevation, the fewer hours of whitewater flow. Table 5.5.1-1 describes the Whitewater Demand Schedule. The hours of whitewater flow in Table 5.5.1-1 shall be provided during the core hours as described in Section 5.5.1.2, except on those days where pre-scheduled releases (Section 5.5.1.3) occur. Water availability permitting, pre-scheduled releases will override the whitewater demand schedule in Table 5.5.1-1.

| Table 5.5.1-1: Sacandaga River Whitewater Demand Schedule | | | | | |
|--|---------|------------------------------|-----------|--|-----------|
| June 1- June 22, Weekends only | | June 23-September 8 Daily | | September 9-September 23, weekends only | |
| GSL Level and Elevations | WW Hrs | GSL Level and Elevations | WW Hrs | GSL Level and Elevations | WW Hrs |
| 1.00 - 1.19 | None | 1.00 - 1.19 | none | 1.00 - 1.19 | none |
| 1.20 | 4 hours | 1.20 | 5 hours | 1.20 | 3 hours |
| 2.00 | 5 hours | 2.00 | 7 hours | 2.35 | 3 hours |
| 2.75 and above | 6 hours | 2.35 and above | 8 hours | 3.00 and above | 6 hours |

5.5.1.5 Whitewater Flow Forecasting

To enable whitewater paddlers to gage their plans for whitewater paddling on the Sacandaga River, Erie will provide information on flow forecasts and pre-scheduled releases that will be made publicly available via a toll-free telephone number and a local phone line one week in advance of the release. Erie shall provide forecasts on a day ahead basis and provisionally on a two-day ahead basis. Information on flow forecasts and pre-scheduled releases will be posted on a Web site by Erie a minimum of two weeks in advance of the release.

5.5.2 Non-Project Features

The following features of the Whitewater Program will be developed as described below, but are not intended to be a part of the Stewarts Bridge Project license.

5.5.2.1 River Manager Program

The River Manager Program, an independent, self-supporting private enterprise, which coordinates and manages the commercial whitewater rafting activities, and operates the South Side Put-in and North Side Take-out and parking facilities, as well as the shuttle service, will continue to operate in its current form. The facilities and operations of the River Manager Program are to be omitted entirely from the new license for the Stewarts Bridge Project.

5.5.2.2 Non-Commercial Facilities

The following physical facilities will be constructed by Erie, at a cost not to exceed \$50,000, in support of the Whitewater Program within 18 months of issuance and acceptance of a new license for the Stewarts Bridge Project.

5.5.2.2.1 North Side Put-In Area

Subject to the funding limits stated in Section 8.3.4, Erie will construct a put-in area on the north side of the Sacandaga River at a location immediately east of County Road 7 (Stewarts Bridge Road) near the existing Niagara Mohawk transmission line. The put-in area will consist of a parking area and trail to link the parking area with the improved canoe portage trail. Erie will consult with NYSDEC (who in turn will consult with ADK at a minimum) prior to design and construction of the put-in. Specific provisions for the North Side Put-In Area are as follows:

- The parking area will be designed and managed to prohibit parking by buses and vehicles with trailers (*i.e.*, commercial vehicles). Saratoga County will be requested to post signs along County Route 7 to prohibit parking along the roadway.
- The parking area will provide capacity for no more than 25 vehicles (including cars and trucks) with the ultimate parking capacity being defined by site constraints.
- After construction of the put-in facilities, the State will take donation of fee ownership and will assume liability commensurate with ownership. Where necessary to avoid conflict with Erie's project boundary or project facilities, the State will receive necessary easements from Erie and will assume liability as if the easement were held in fee.
- These facilities will remain closed and operation will not begin until the transfer to the State is consummated. Upon transfer of the put-in facilities

to the State, maintenance of the facilities will become the responsibility of the State. The State will work diligently to secure necessary property rights.

- Signage will be erected and maintained at the parking area to a) direct boaters to the designated north side whitewater access site, b) advise boaters of the availability of a commercial shuttle service (if available), and c) provide appropriate messages which insure that the public is forewarned of the hazards and recommended whitewater precautionary safety measures.
- The access trail will be located with the assistance of Erie's operational personnel to prevent conflict with project monitoring equipment in the vicinity of Stewarts Bridge Dam.
- Existing "No Whitewater Access" signs will be used at locations other than the designated north and south side put-ins.

Upon completion of construction, Erie shall convey the facilities and fee title to the State together with sufficient easements to enable the State to control access to and operate the facilities. Upon conveyance of facilities and the associated interests in land, the affected area shall be excluded from the project boundary and Erie shall have no further responsibility with respect to the operation and maintenance of the facilities.

5.5.2.2.2 South Side Take-Out Area

Subject to the funding limits stated in Section 8.3.4, Erie will develop a take-out area at the site of the former Hadley Town Beach on the right bank of the Hudson River just downstream of the mouth of the Sacandaga River. Development of the site will include improvements to the gravel access road to provide parking space for 12 – 15 vehicles. To the extent possible, improvements will be designed so that the parking area is not visible from the river. Erie will consult with NYSDEC (who in turn will consult with ADK at a minimum) prior to the design and construction of the take-out area. Specific provisions for the South Side Take-Out area are as follows:

- The parking area will be designed and managed to prohibit parking by buses and vehicles with trailers (*i.e.*, commercial vehicles).
- Following development of the take-out area, the State will take ownership of the facilities and will assume liability commensurate with ownership. Lands needed for the South Side Take-Out are expected to be part of land acquisition by the State through Open Space Institute funding arrangements.
- These facilities will remain closed and operation of these facilities will not begin until the transfer to the State is consummated. Upon transfer of the facilities to the State, maintenance of the facilities will become the responsibility of the State. The State will work diligently to secure necessary property rights.

Upon completion of construction, Erie (Licensee funding the facilities) and NMPC (current owner of the affected lands), shall, respectively, convey the facilities and fee title to the State together with sufficient easements to enable the State to control access to and operate the facilities. The lands on which these facilities are to be constructed are not within the existing project boundary and are not to be included in the project boundary for a new license for the Stewarts Bridge Project. Upon conveyance of facilities and the associated interests in land, Erie and NMPC shall have no further responsibility with respect to the operation or maintenance of the facilities.

5.5.2.3 Commercial Facilities

5.5.2.3.1 South Side Put-In Area

Erie will continue operation and maintenance of the existing South Side Put-In Area through the River Manager Program as a whitewater access recreation area, including all infrastructure, for the life of a new license, except that Erie may sell or otherwise transfer the site to a private whitewater entity during the term of license. If the facility is offered for sale to any entity other than a transferee of the license, or to a private whitewater entity executing this Settlement Offer, the State shall have the continuing right of first refusal to purchase the site.

This area shall not, however, become part of a new license for the Stewarts Bridge Project.

5.5.2.3.2 North Side Take-Out Area

Erie will continue the operation and maintenance of the existing North Side Take-Out Area through the River Manager

Program for the life of any new license, except that Erie may sell or lease the site, including all infrastructure and responsibility for operation and maintenance, to a private whitewater entity during the term of license. If the North Side Take-Out Area is offered for sale to any entity other than a transferee of the license, or to a private whitewater entity executing this Settlement Offer, the State shall have the continuing right of first refusal to purchase the site. Regardless of ownership of the site, this Settlement Offer includes documentation of the minimum requirements for continuing ownership, operation and maintenance of the site as Appendix F. These requirements are to be included in any River Manager Contract, and in any lease, deed, easement or covenant for the property.

This area shall not, however, become part of a new license for the Stewarts Bridge Project.

6.0 HUDSON RIVER PROJECT, FERC NO. 2482

The provisions of this settlement offer for enhancement measures at the Hudson River Project are summarized in Tables 6.0-1 and 6.0-2.

Erie will operate the Hudson River Project in a manner consistent with operation of Great Sacandaga Lake by The Regulating District and in a manner consistent with Erie's obligations for flow management below the Feeder Dam Project (see Section 7.3).

Table 6.0-1
Summary of Settlement Offer Measures at the Spier Falls Development

| Issue | Description | Timeframe for Implementation |
|-------------------------------|---|---|
| Impoundment Fluctuation | 1' daily from about 3/15 – 6/15 for fish spawning* 2' daily remainder of the year * The actual start date will depend on water temperatures for walleye spawning (see Section 1.14). | Upon License Issuance & Acceptance |
| Fish Protection | Full 1" trashrack overlays. | 2010 |
| Downstream Fish Movement | 25 cfs continually for passage, 1/1 – 12/31 | 2010 |
| Project Recreation Facilities | <ul style="list-style-type: none">• Low angle access path for handicapped boat access• Canoe portage• Improve existing boat launch• Shoreline access to FERC boundary property• Impoundment campsites | Within 18 Months of License Issuance & Acceptance |

Table 6.0-2
Summary of Settlement Offer Measures at the Sherman Island Development

| Issue | Description | Timeframe for Implementation | | | | | | | | | | | | | | | |
|---|--|---|-------------|---------------|------------------------|-------------------|--------------------------|---|--|--|-------|------------------|------------|-------|-------------------|------------|--|
| Impoundment Fluctuation | 1' daily from about 3/15 – 6/15 for fish spawning* 2' daily remainder of the year * The actual start date will depend on water temperatures for walleye spawning (see Section 1.14). | Upon License Issuance & Acceptance | | | | | | | | | | | | | | | |
| | Inclusion of a partial rubber dam | Within 18 Months of License Issuance and Acceptance | | | | | | | | | | | | | | | |
| Bypass Flows | <table border="0"> <thead> <tr> <th><u>Channel</u></th><th><u>Flow</u></th><th><u>Period</u></th></tr> </thead> <tbody> <tr> <td>North/South (Combined)</td><td>675 (672-678) cfs</td><td>Walleye Spawning Period*</td></tr> <tr> <td colspan="3">*The duration of spawning flows for walleye will be temperature dependent in accordance with NYSDEC's Definition of Walleye Spawning Season (see Section 1.14).</td></tr> <tr> <td>North</td><td>100 (99-101) cfs</td><td>year round</td></tr> <tr> <td>South</td><td>150 (148-152) cfs</td><td>year round</td></tr> </tbody> </table> | <u>Channel</u> | <u>Flow</u> | <u>Period</u> | North/South (Combined) | 675 (672-678) cfs | Walleye Spawning Period* | *The duration of spawning flows for walleye will be temperature dependent in accordance with NYSDEC's Definition of Walleye Spawning Season (see Section 1.14). | | | North | 100 (99-101) cfs | year round | South | 150 (148-152) cfs | year round | First Walleye Spawning Season after License Issuance and Acceptance Within 18 Months of License Issuance and Acceptance |
| <u>Channel</u> | <u>Flow</u> | <u>Period</u> | | | | | | | | | | | | | | | |
| North/South (Combined) | 675 (672-678) cfs | Walleye Spawning Period* | | | | | | | | | | | | | | | |
| *The duration of spawning flows for walleye will be temperature dependent in accordance with NYSDEC's Definition of Walleye Spawning Season (see Section 1.14). | | | | | | | | | | | | | | | | | |
| North | 100 (99-101) cfs | year round | | | | | | | | | | | | | | | |
| South | 150 (148-152) cfs | year round | | | | | | | | | | | | | | | |
| Fish Protection | Full 1" trashrack overlays. | 2006 | | | | | | | | | | | | | | | |
| Downstream Fish Movement | 25 cfs continually for passage, 1/1 – 12/31 | 2006 | | | | | | | | | | | | | | | |
| Project Recreation Facilities | <ul style="list-style-type: none"> • Low angle access path for handicapped at boat access • Canoe portage • Island campsites • Shoreline access to FERC boundary property • Fishing access to bypass • Improve existing Sherman Island boat launch • Privies at Sherman Island boat launch on a trial basis | Within 18 Months of License Issuance & Acceptance | | | | | | | | | | | | | | | |
| Non-Project Recreation Facilities | <ul style="list-style-type: none"> • Town of Queensbury boat launch | Not Part of New License | | | | | | | | | | | | | | | |

6.1 Impoundment Fluctuations

The following provisions to reduce impoundment fluctuations will be initiated upon issuance and acceptance of the new license for the project. Erie will consult with the NYSDEC and USFWS prior to the first walleye spawning season following license issuance to determine the location(s) for monitoring water temperatures to be used to define the beginning and end of walleye spawning season.

6.1.1 Spier Falls Development

During the spawning period for walleye and other fish, from the start of walleye spawning (about March 15) until June 15 of each year, daily impoundment fluctuations will be limited to one foot (between elevations 435.8 and 436.8 USGS). The actual start date for limitations on impoundment fluctuation will depend on water temperatures for walleye spawning in accordance with NYSDEC's Definition of Walleye Spawning Season (see Section 1.14).

During the remainder of the year, daily impoundment fluctuations will be limited to two feet (between elevations 434.8 and 436.8 USGS).

6.1.2 Sherman Island Development

During the spawning period for walleye and other fish, from the start of walleye spawning (about March 15) until June 15 of each year, daily impoundment fluctuations will be limited to one foot (between elevations 352.3 and 353.3 USGS). The actual start date for limitations on impoundment fluctuation will depend on water temperatures for walleye spawning in accordance with NYSDEC's Definition of Walleye Spawning Season (see Section 1.14).

During the remainder of the year, daily impoundment fluctuations will be limited to two feet (between elevations 351.3 and 353.3 USGS).

6.1.2.1 Partial Pneumatic Flashboards

Within 18 months of license issuance and acceptance, Erie will install pneumatic flashboards on the straight section of the spillway near the non-overflow section of the Sherman Island Dam to facilitate pond level control. The pneumatic flashboard section will be designed to allow the 10-year flood to pass the dam without failing the remaining wooden flashboard sections. Whenever replacement of the wooden flashboards becomes necessary due to failure of these flashboards, Erie will first consult with the NYSDEC regarding the scheduling of flashboard replacement. Erie will work diligently to start and complete the installation of replacement flashboards as quickly as possible either before the onset of walleye spawning (defined in subsection 1.14) or after June 15 (the end of the spawning period for other fish). During the interval of time between the onset of walleye spawning and June 15, NYSDEC and Erie may, after consultation, agree upon an alternate schedule for flashboard replacement (for the given year only).

Until flashboard reinstallation begins, Erie will maintain a maximum daily operational drawdown of 6 inches below the Sherman Island spillway crest elevation (349.6 ft. USGS). A special exception to permit a maximum drawdown to 1.0 feet below spillway crest elevation is allowed for those hours when people are to be actually working on the dam crest installing flashboards. Once flashboard installation is complete, normal operations will resume.

6.2 Fish Protection and Downstream Movement

In order to provide protection against entrainment of fish into the project turbines, and to afford routes of downstream movement, Erie will provide the following facilities in the timeframes identified.

6.2.1 Spier Falls Development

Erie will install full trash rack overlays with maximum clear spacing of one inch in 2010. The date of installation may be changed on mutual consent of USFWS, NYSDEC and Erie. To afford a route of downstream passage for fish, Erie will discharge a continuous flow of 25 cfs through modifications to the existing trash sluice, beginning at the time overlays are installed.

6.2.2 Sherman Island Development

Erie will install full trashrack overlays with maximum clear spacing of one inch in 2006. The date of installation may be changed on mutual consent of USFWS, NYSDEC and Erie. To afford a route of downstream passage for fish, Erie will discharge a continuous flow of 25 cfs through modifications to the existing ice sluice located adjacent to the powerhouse, beginning at the time overlays are installed.

6.3 Minimum Flows

Within 18 months of license issuance and acceptance, unless otherwise noted, Erie will provide the following minimum flows.

6.3.1 Spier Falls Development

No minimum flows are required at the Spier Falls Development, except as part of provisions for fish movement.

6.3.2 Sherman Island Development

Minimum flows will be discharged from the current intake structure at the south end of the buttress dam, non-overflow section. The minimum flow discharge facility will be designed to limit injury to fish passing through it.

The minimum flow from the intake structure discharge will be diverted through the north and south channels by the use of a submerged weir placed across the present north channel where most of the spillage currently flows. This weir will be high enough to raise the water surface needed for spillage into the north channel to overcome the hydraulic control that is restricting water from the south channel. The exact configuration such as location, size and shape of the weir will be determined after all the parameters on the direction of flow are finalized. This diversion weir would need to be constructed of a durable material because it would be exposed to severe hydraulic loads and site conditions. The final design will need to consider all potential foundation problems such as scouring, piping (i.e., water flow under the wall) and sufficient bearing strength to prevent wall tipping and settlement. The weir will be maintained for the life of the license.

It is understood that the minimum flows listed below are nominal flows such that actual flows will vary depending on the allowable fluctuation in headpond elevation (one foot during walleye spawning and two feet otherwise). The variance in minimum flows is indicated in parentheses below.

6.3.2.1 North Channel

A minimum flow of 100 cfs (varying between 99 and 101 cfs) will be provided in the North Channel throughout the year (see Section 6.3.2.3).

6.3.2.2 South Channel

A minimum flow of 150 cfs (varying between 148 and 152 cfs) will be provided in the South Channel throughout the year (see Section 6.3.2.3).

6.3.2.3 North and South Channels during Walleye Spawning

A minimum flow of 675 cfs (varying between 672 and 678 cfs) will be discharged into the combined North and South Channels of the bypass to facilitate walleye spawning. The year round minimum flows in the North and South Channels will be increased during walleye spawning season so that the combined flows are no less than 675 cfs. Walleye spawning flows will be discharged for the first walleye spawning season following license issuance and acceptance. Walleye spawning is water temperature dependent and the spawning flow will commence sometime after March 15 and last until sometime in May or early June in accordance with NYSDEC's Definition of Walleye Spawning Season (see Section 1.14). Erie will consult with the NYSDEC and USFWS prior to the first walleye spawning season following license issuance to determine the location(s) for monitoring water temperatures to be used to define the beginning and end of walleye spawning season.

6.4 Recreational Facilities

Erie will provide the recreational improvements described below within 18 months of issuance and acceptance of a new license, except as noted in Section 6.4.2.5 (Town of Queensbury Boat Launch). See Figures 6.4-1 and 6.4-2 for diagrams of the recreational facilities.

Erie will continue to permit public access to the shoreline of the Spier Falls and Sherman Island developments across Erie's land where project facilities, hazardous areas

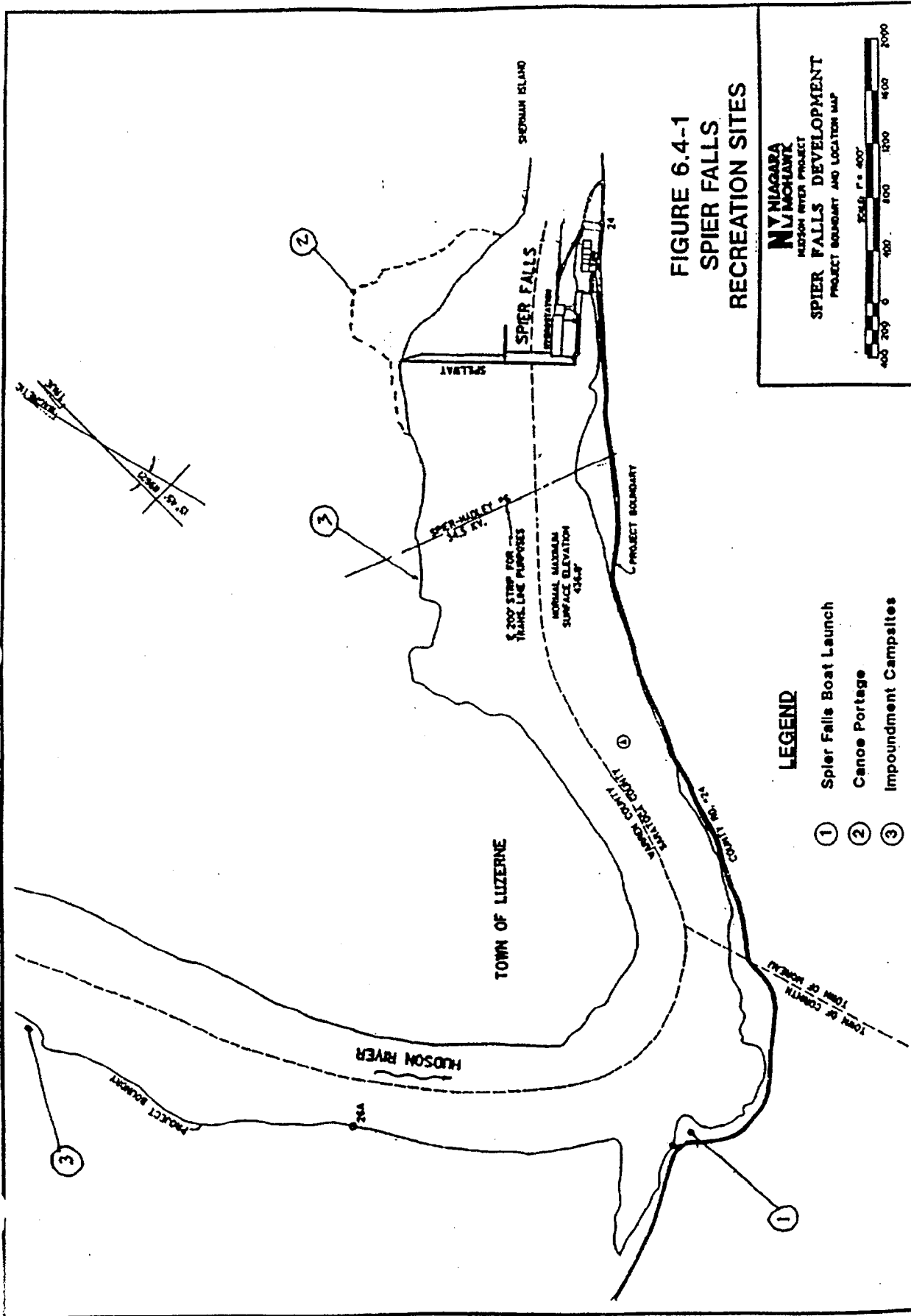
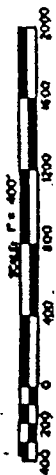


FIGURE 6.4-1
SPIER FALLS
RECREATION SITES

NY NIAGARA
NIMCHAWTZ
HUDSON RIVER PROJECT
SPIER FALLS DEVELOPMENT
PROJECT BOUNDARY AND LOCATION MAP



LEGEND

- ① Spier Falls Boat Launch
- ② Canoe Portage
- ③ Impoundment Campsites

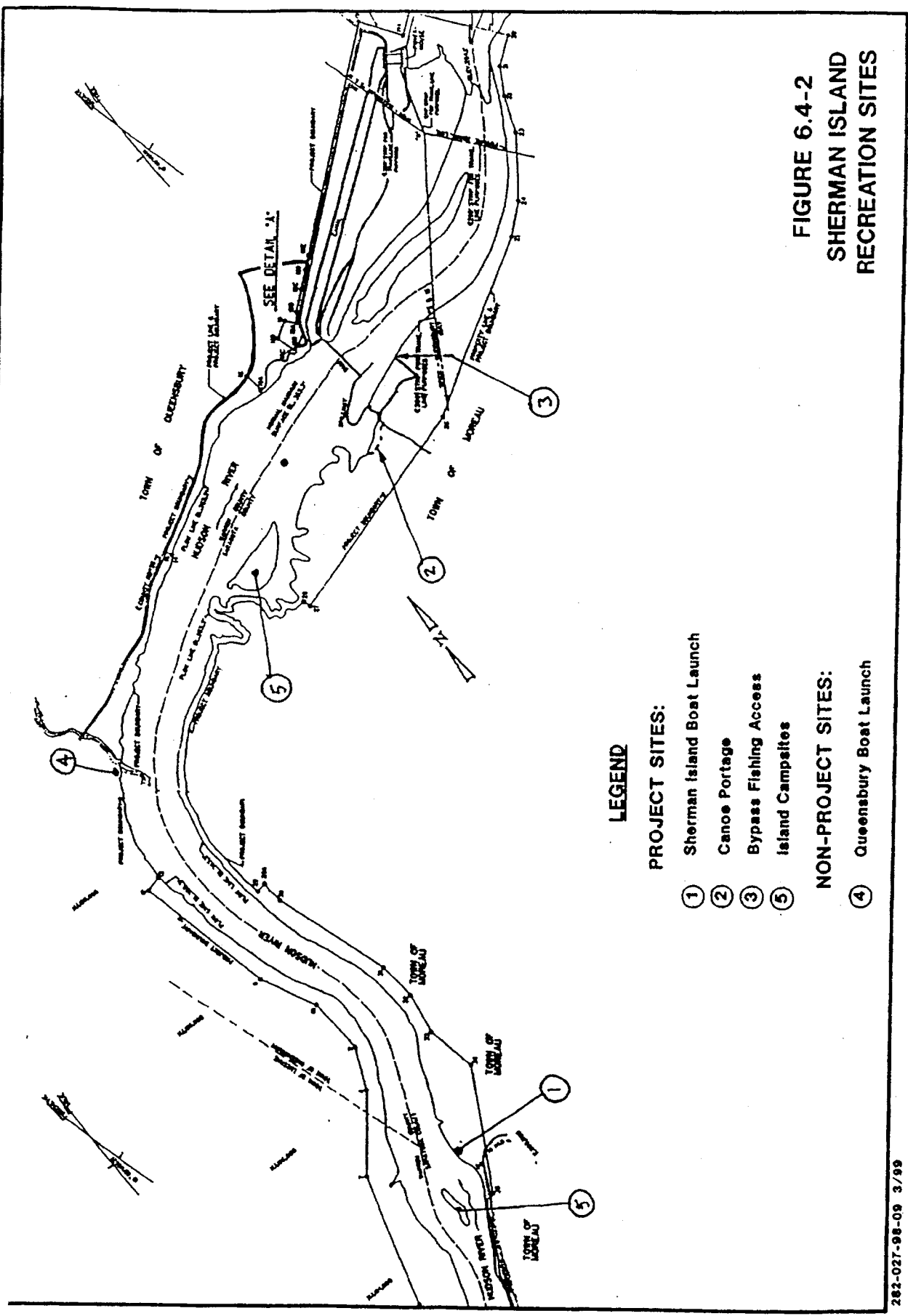


FIGURE 6.4-2
SHERMAN ISLAND
RECREATION SITES

and existing leases, easements and private ownership along the shoreline do not preclude it.

6.4.1 Spier Falls Development

See Figure 6.4-1 for location of recreational sites.

6.4.1.1 Improvements to Existing Boat Launch

Erie will develop improvements to the existing Spier Falls boat launch on the right bank of the river. The improvements are intended to cause only slight expansion of the site to accommodate an expanded picnic area. Parking space for disabled persons will be added, along with a low angle access trail to the picnic area and water's edge for wheelchair use. New picnic tables will be added, at least one of which will be ADA compliant. The boat launch area at the water will be regraded to a gentler slope if there is sufficient space.

6.4.1.2 Canoe Portage

Erie will develop a canoe portage trail around the north side (left bank) of the dam. Put-in and take-out areas, as well as the clearing of the trail, will be undertaken to minimize ground disturbance and the potential for soil erosion. Signage will be erected at the water's edge to signify the location of the take-out. The canoe portage facilities are described in detail in NMPC's November 1993 response to FERC's August 28, 1992 Additional Information Request (AIR).

6.4.1.3 Impoundment Campsites

Erie will work with the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) to design and develop two campsites on the impoundment for water access. The design concept

for these sites includes minimal ground disturbance, location of a fire ring and a canoe pull-out area at the water's edge. Preliminary design concepts were presented in Niagara Mohawk's November 1993 AIR response.

6.4.2 Sherman Island Development

See Figure 6.4-2 for location of recreational sites.

6.4.2.1 Improvements to Existing Boat Launch

Erie will develop new facilities at the existing Sherman Island boat launch on the right bank of the river. Parking and traffic flow at the site will be improved, and a parking space for disabled persons will be added. A low angle access trail to the water's edge and picnic area will be added, along with additional picnic tables, of which at least one will be ADA compliant. Privies will be installed at the boat launch on a trial basis.

6.4.2.2 Canoe Portage

Erie will develop a canoe portage on the south side (right bank) of the Sherman Island dam. Put-in and take-out areas, as well as clearing of the trail, will be undertaken to minimize ground disturbance.

Appropriate signage will be erected at the water's edge upstream of the take-out to signify its location. Canoe portage facilities are described in detail in NMPC's November 1993 AIR response.

6.4.2.3 Island Campsites

Erie will design and develop two campsites at Sherman Island. The design concept, as presented in NMPC's November 1993 AIR response, includes minimal ground disturbance and a fire ring, and a boat pull-out area at each site.

6.4.2.4 Fishing Access to Bypass

Erie will develop a parking area for four cars off Potter Road with a foot trail leading along the existing maintenance road to the Sherman Island bypass (right bank). It is planned to design the location of these facilities to coincide with public road improvements planned and proposed for the Potter Road Residential Subdivision being pursued by Niagara Mohawk, owner of lands in this vicinity. If the Potter Road Residential Subdivision is implemented, the parking area will be next to Erie's maintenance road gate, and Erie and Niagara Mohawk will make appropriate changes to the project boundary to exclude the Potter Road Residential Subdivision. If the Potter Road Residential Subdivision is not implemented, the parking area will be along the existing Potter Road entrance to the project boundary and the access trail will be extended to the parking area.

6.4.2.5 Town of Queensbury Boat Launch (Non-Project Facility)

Erie will cooperate with the Town of Queensbury and others as needed to develop a new boat launch on Erie's property on the north shore (left bank) of the Sherman Island Impoundment. Erie will not be required to actually undertake development; however, Erie will lease the land underlying the boat launch to the Town of Queensbury.

This area shall not, however, become part of a new license for the Hudson River Project.

6.5 New Project Facilities

6.5.1 Partial Pneumatic Flashboards at Sherman Island

Erie will install a partial pneumatic flashboard system as described above in Section 6.1.2.1 and in Exhibits A and F of The Application for New License for The Hudson River Project (December 18, 1991).

7.0 FEEDER DAM PROJECT, FERC NO. 2554

Provisions for enhancement measures at the Feeder Dam Project are shown on Table 7.0-1.

Table 7.0-1
Summary of Settlement Offer Measures at the Feeder Dam Project

| Issue | Description | Timeframe for Implementation |
|-----------------------------------|---|---|
| Impoundment Fluctuation | 1' daily 4/1 – 6/15 for centrarchidae spawning 2' daily 6/16 – 3/31 Note: Inclusion of a partial rubber dam within 18 Months of License issuance and acceptance. | Upon License Issuance & Acceptance |
| Base Flows | Maintain instantaneous base flow of 1,500 cfs and an average daily flow of 1760 cfs or the interim base flow a discussed in Section 3.4.1. | Upon License Issuance and Acceptance for the Great Sacandaga Lake and Feeder Dam Projects |
| Fish Protection | Full 1" trashrack overlays. | 2004 |
| Downstream Fish Movement | 25 cfs continually for passage, 1/1 – 12/31 | 2004 |
| Project Recreation Facilities | <ul style="list-style-type: none">• Tailrace fishing access with parking• Shoreline access• Canoe portage | Within 18 Months of License Issuance & Acceptance |
| Non-Project Recreation Facilities | <ul style="list-style-type: none">• Parking to accommodate canoeing and biking/walking path along canal• Cartop boat launch with 10 car parking• Canoe access to Feeder Canal | Within 18 Months of License Issuance & Acceptance |

7.1 Impoundment Fluctuations

Upon issuance and acceptance of a new license for the project, Erie will limit daily fluctuations of the impoundment between April 1 and June 15 of each year to one

foot (between elevations 283.1 and 284.1 USGS to facilitate fish spawning. For the remainder of the year, daily impoundment fluctuations will be limited to two feet (between elevations 282.1 and 284.1 USGS) while river flows are within the operating range of the turbines.

7.1.1 Partial Pneumatic Flashboards

Within 18 months of license issuance and acceptance, Erie will install pneumatic flashboards on a portion of the spillway section of the Feeder Dam near the powerhouse to facilitate pond level control. The pneumatic flashboard section will be designed to allow the 10-year flood to pass the dam without failing the remaining wooden flashboard sections. Whenever replacement of the wooden flashboards becomes necessary due to failure of these flashboards, Erie will first consult with the NYSDEC regarding the scheduling of flashboard replacement. Erie will work diligently to start and complete the installation of replacement flashboards as quickly as possible either before the onset of walleye spawning (defined in subsection 1.14) or after June 15 (the end of the spawning period for other fish). During the interval of time between the onset of walleye spawning and June 15, NYSDEC and Erie may, after consultation, agree upon an alternate schedule for flashboard replacement (for the given year only).

Until flashboard reinstallation begins, Erie will maintain a maximum daily operational drawdown of 6 inches below the Feeder Dam spillway crest elevation (280.6 ft. USGS). A special exception to permit a maximum drawdown to 1.0 feet below spillway crest elevation is allowed for those hours when people are to be actually working on the dam crest installing flashboards. Once flashboard installation is complete, normal operations will resume.

7.2 Fish Protection and Downstream Movement

In order to provide protection against entrainment of fish into the project turbines, Erie will install full trashrack overlays with maximum clear spacing of one inch in 2004. The date of installation may be changed on mutual consent of USFWS, NYSDEC and

Erie. To afford a defined route of downstream movement for fish, Erie will discharge a continuous flow of 25 cfs through modifications to the existing trash sluice, beginning at the time the overlays are installed.

7.3 Base Flow

Upon issuance and acceptance of new licenses for the Feeder Dam Project and for Great Sacandaga Lake, Erie will maintain a minimum average daily flow of 1,760 cfs below Feeder Dam. This flow may be reduced in accordance with the provisions of subsection 3.4.3. and Table B or C (p.38), whichever is applicable.

In addition, the Project shall be operated so that an instantaneous base flow of 1,500 cfs is provided below Feeder Dam subject to any interim Hudson River base flow adjustments determined by the NYSDEC should Great Sacandaga Lake approach or reach Level Curve 1.0 (see subsections 3.4.2 and 3.4.3).

Dam leakage and the 25 cfs fish movement flow will not be included in the 1,500 cfs base flow. Erie will provide NYSDEC with headwater elevation, tailwater elevation and generation (kW) data at Feeder Dam when requested. Erie will also provide NYSDEC with a telephone number at Erie's dispatch center to provide realtime information. Prior to license issuance and acceptance, Erie will provide NYSDEC with a kW vs. cfs relationship for Feeder Dam with relevant flow data from the USGS Fort Edward gage to verify the general accuracy of the kW vs. cfs relationship. Should any turbine or generator be changed, an updated kW vs. cfs relationship will be provided to NYSDEC. Erie will also install by license issuance and acceptance "generation on" lights for each of the Feeder Dam generating units that can be viewed from outside the powerhouse as a method to visually verify that the 1,500 cfs flow is being provided (two lights on will mean that the 1,500 cfs is being provided).

7.4 Recreation Facilities

Erie will provide the recreational improvements described below within 18 months of issuance and acceptance of a new license. See Figure 7.4-1 for diagrams of the recreational facilities.

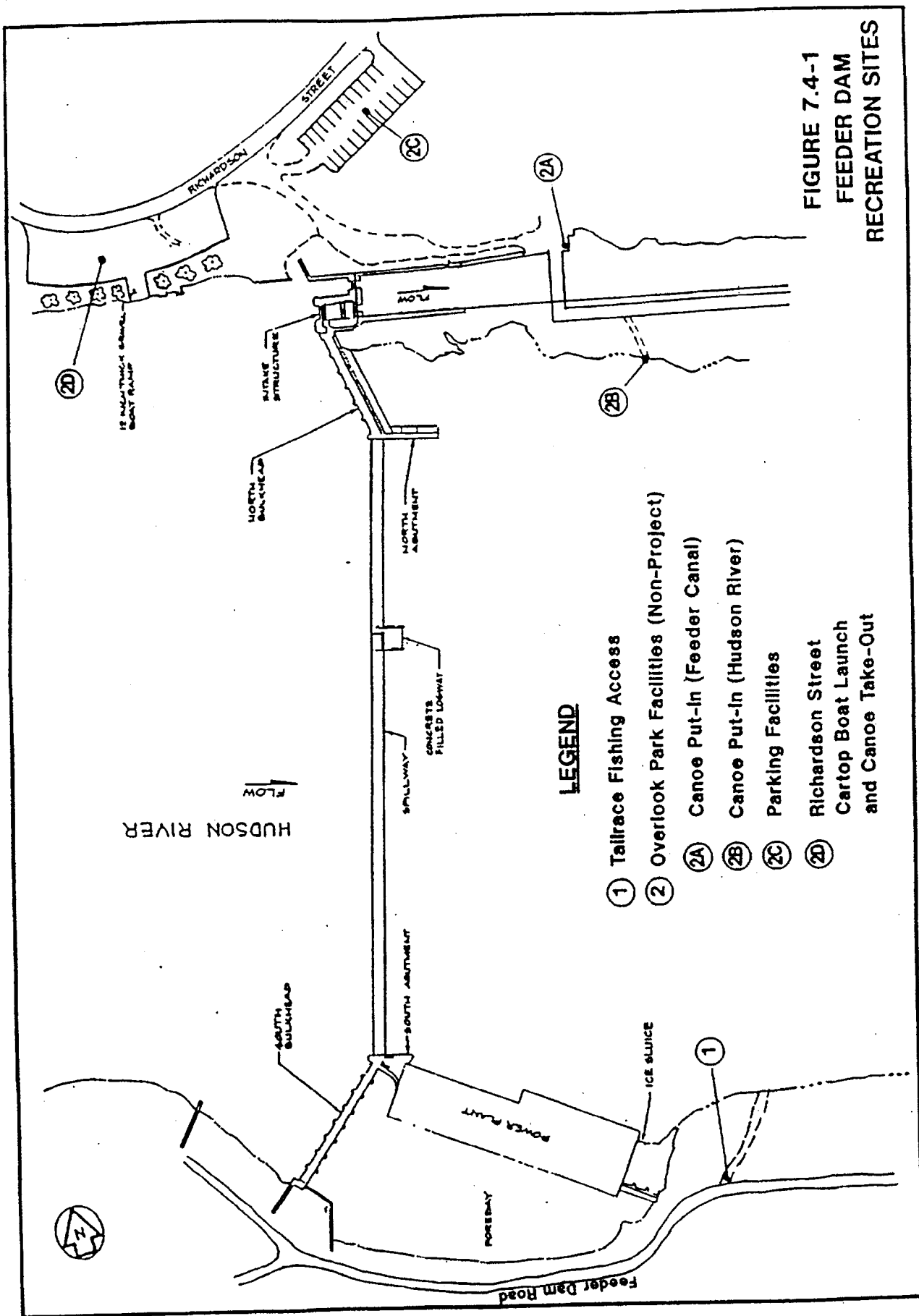


FIGURE 7.4-1
FEEDER DAM
RECREATION SITES

282-027-98-09 3/99

Erie will continue to permit public access to the shoreline of the Feeder Dam Impoundment across Erie's land where project facilities, hazardous areas and existing leases, easements and private ownership along the shoreline do not preclude it. The Nolan Road, Town of Queensbury and proposed Richardson Road boat launches are expected to adequately accommodate public access to project waters.

7.4.1 Tailrace Fishing Access

Erie will provide space to park a single vehicle above the existing gate on Feeder Dam Road to permit continued use of the informal access to the tailrace for fishing.

7.4.2 Overlook Park (Non-Project Facilities)

Erie will cooperate with the Feeder Canal Alliance and the Town of Queensbury to develop an Overlook Park along Richardson Street and Haviland Avenue. The facilities listed under this section (7.4.2) will be developed by Erie on a schedule to be negotiated between Erie, the Town of Queensbury and the Feeder Canal Alliance. Upon completion of these facilities, Erie will enter into a no fee agreement with the Town of Queensbury for the use of Erie lands and maintenance of the entire Overlook Park.

These facilities are partly within the project boundary. Upon completion of the facilities, Erie will seek an amendment of license to revise the project boundary to exclude lands occupied by the facilities.

7.4.2.1 Canoe Portage (Non-Project Facility)

Erie will cooperate with the Feeder Canal Alliance to develop and/or improve a put-in area on the Hudson River contingent upon successful resolution of land ownership questions. The take-out area for the canoe portage will be at the proposed Richardson Street boat launch.

Development of the canoe portage facility will be completed within 12 months of the resolution of land ownership, or within 18 months of license issuance, whichever is later. This facility will not become part of the Project.

7.4.2.2 Parking and Picnic Facilities (Non-Project Facilities)

Erie will provide parking facilities for 16 cars with a trail leading to the car-top boat launch and a trail leading to the Feeder Canal. The parking area will be located on Erie's lands in accordance with the final Overlook Park Master Plan prepared by the Feeder Canal Alliance. Erie will also provide a one-time donation of two cement picnic tables which will be stationed based on the Park design provided by the Feeder Canal Alliance. This area will not become part of the Project.

7.4.2.3 Cartop Boat Launch (Non-Project Facility)

Erie will construct the Richardson Street boat launch on the left bank of the river upstream of the entrance to the Feeder Canal. Appropriate signage will be installed to identify the site and to prohibit cars with trailers. If necessary, a post and rail fence will be installed to limit access to the boat launch to cars without trailers. This area will not become part of the Project.

7.5 New Project Facilities

7.5.1 Partial Pneumatic Flashboards

In lieu of the full length pneumatic flashboard system formerly proposed, Erie will design and install a partial pneumatic flashboard system on the permanent crest of the Feeder Dam within 18 months of license issuance and acceptance as described in subsection 7.1.1.

8.0 *ADVISORY COUNCILS, ENHANCEMENT FUNDS AND REASSESSMENT OF BENEFITS CHARGES*

The following provisions of the Settlement Offer relating to the establishment of various councils are expressly intended by the signatories to this Settlement Offer to remain outside the new licenses for the subject projects. Enhancement Funds described below will be included in new licenses only to the extent of annual reporting by Erie.

8.1 River Basin Council

A single River Basin Council (RBC), chaired by NYSDEC and consisting of four Advisory Councils, will be formed to coordinate the four enhancement funds described in Section 8.3 below. The four funds will be administratively managed by Erie, or its successors, assigns or transferees, and will be distributed to and according to the decisions of the individual Advisory Councils. All signatories to this Settlement Offer will be invited to participate in the RBC by designating a representative.

The RBC shall have at least one meeting per year, at which time there shall be annual reports from each Advisory Council, including an accounting of the expenditure of the previous year's funds and plans for expenditure of the ensuing year's funds. The approved minutes of this annual meeting shall be transmitted to Erie and shall include the reports of the four Advisory Councils.

8.2 Advisory Councils

NYSDEC will chair each Advisory Council until the individual Advisory Councils adopt their own bylaws and until the time the Advisory Councils identify a chair person. The Advisory Councils are described below, along with the list of the entities who shall be invited to provide representation on each Council, provided that potential members are signatories to this Settlement Offer. Members of each Council will have one vote with regards to decisions and recommendations of that Advisory Council, including distribution of funds. The Sacandaga Whitewater Advisory Council (SWAC) decisions will be made by consensus.

All four Councils will exist and function in accordance with the By-Laws and Rules of Procedures to be adopted by each Council, and will operate consistent with this Offer of Settlement.

8.2.1 Great Sacandaga Lake Advisory Council (GSLAC)

The GSLAC will administer the Great Sacandaga Lake Enhancement Fund. The following list of entities (and the number of representatives) will be invited to serve on the GSLAC:

- Great Sacandaga Lake Business/Marina Representative (1)
- Saratoga County (one county, two towns) (3)
- Fulton County (one county, three towns) (4)
- Great Sacandaga Lake Fisheries Federation, Inc. (1)
- NYSDEC (1)
- USFWS (1)
- APA – *ex officio* (1)
- Great Sacandaga Lake Association (1)
- Adirondack/New York State Environmental Group (1)
- Regulating District (1)
- Erie - *ex officio* (1)

8.2.2 Sacandaga/Hudson River Advisory Council (SHRAC)

The SHRAC will administer the Sacandaga/Hudson River Enhancement Fund. All signatories to this Settlement Offer or their representative will be invited to serve on the SHRAC.

8.2.3 Fisheries Advisory Council (FAC)

The FAC will administer the Fisheries Enhancement Fund. The following list of representatives will be invited to serve on the FAC:

- NYSDEC
- Erie
- T U
- USFWS

8.2.4 Sacandaga Whitewater Advisory Council (SWAC)

The SWAC will administer the Whitewater Enhancement Fund and Erie will make maximum payments for new facilities as described in Section 8.3.4 under a payment plan to be agreed upon between the SWAC and the Licensee. The mission of SWAC will be to stay abreast of whitewater recreation activities and program operations on the lower Sacandaga River and to foster the reliable and equitable availability of diverse recreational opportunities to both commercial and general public visitors with minimal environmental impacts and reasonable costs. At a minimum, a representative from each of the following entities will be invited to serve on the SWAC :

- AW
- ADK
- each commercial whitewater outfitter serving the river
- Saratoga County
- the Town of Hadley
- Erie
- Concessionaire for the North Side Take-Out
- NYSDEC
- the Towns of Hadley/Lake Luzerne Chamber of Commerce
- NPS

8.3 Enhancement Funds

Four enhancement funds have been provided for in this Offer of Settlement. With the exception of the one-time funding, not to exceed \$50,000, for the development of the North Side Put-In area and the South Side Take-Out area as described in Sections 5.5.2.2.1 and 5.5.2.2.2 and Section 8.3.4, these enhancement funds are to be administered by the respective Advisory Councils identified in Section 8.2 above. The Enhancement Funds are not to be included as conditions of the new licenses for the subject projects, except as to the reporting requirements described below.

On or before April 1 of each year, Erie shall file with FERC a statement reporting the following information pertaining to the three annual enhancement funds described in Sections 8.3.1, 8.3.2, and 8.3.3 of this Offer of Settlement:

- a description of the amount of money and activities on which the respective enhancement funds were spent during the preceding calendar year at the direction of the respective Advisory Councils;
- the amount of money Erie will contribute to the Great Sacandaga Lake Enhancement Fund, the Hudson/Sacandaga River Enhancement Fund, and the Fisheries Enhancement Fund during the calendar year of the report pursuant to the respective provisions of Sections 8.3.1, 8.3.2, and 8.3.3 of this Offer of Settlement.

The one-time \$25,000 whitewater enhancement fund described in Section 8.3.4 shall be subject to one report filed with FERC by Erie after the fund has been exercised, describing the amount of the fund utilized and the activities on which the whitewater enhancement fund was spent.

8.3.1 Great Sacandaga Lake (GSL) Enhancement Fund

Erie agrees to contribute \$15,000 annually in 2000 and 2001 and, beginning in 2002, to contribute \$30,000 annually to the GSL Enhancement Fund. After 2002, annual contributions to the GSL Enhancement Fund will continue, escalated at the rate of inflation as published annually in the Consumer Price Index throughout the License term.

Payment of the \$15,000 for the GSL Enhancement Fund in 2000 shall be made within 30 days after the GSLAC has convened its initial meeting and adopted its By-Laws. Payments thereafter shall be made no later than January 15 of each year beginning in 2001.

The GSL Enhancement Fund shall be used within the Sacandaga River Basin drainage upstream of Conklingville Dam. Funds may be used, but are not

limited to projects, studies or services, designated by majority vote of the GSLAC, for any of the following purposes: ecosystem restoration or protection, fish stocking, natural resource stewardship and new recreation resources (beyond those required by this Settlement Offer).

8.3.2 Sacandaga/Hudson River Enhancement Fund

Erie agrees to contribute \$10,000 annually, escalated at the rate of inflation as published annually in the Consumer Price Index, to the Hudson/Sacandaga River Enhancement Fund. A contribution of \$2,000 per development (or a total of \$10,000 for all five developments) will be due within 60 days after license issuance and acceptance and will continue annually throughout the license terms.

The Sacandaga/Hudson River Enhancement Fund may be used within a) the Sacandaga River as defined from Conklingville Dam to the confluence of the Hudson River and b) the Hudson River as defined from the confluence of the Sacandaga River downstream to Feeder Dam. Funds may be used, but not limited to, projects, studies or services, designated by majority vote of the SHRAC, for any of the following purposes: ecosystem restoration or protection such as fish stocking, natural resource stewardship, and new recreation resources (beyond those required by this Settlement Offer).

8.3.3 Fisheries Enhancement Fund

Erie will contribute \$5,000 annually, escalated at the rate of inflation, as published annually in the Consumer Price Index, to the Fisheries Enhancement Fund, which may be used for any fishery related projects throughout New York State. This fund may be used only for appropriate projects which meet the following purposes:

1. stream habitat improvement;
2. handicapped fishing access;

3. heritage strain brook trout restoration;
4. public fishing rights acquisition.

Payment of the \$5,000 for the Fisheries Enhancement Fund in 2000 shall be made within 30 days after the FAC has convened its initial meeting and adopted its By-Laws. Payments thereafter shall be made no later than January 15 of each year beginning in 2001.

8.3.4 Sacandaga Whitewater Enhancement Fund

Erie will provide one-time funding, not to exceed \$50,000, for development of the North Side Put-In area and the South Side Take-Out area facilities as described in Section 5.5.2.2 above. Erie will also fund whitewater enhancements, including the Rodeo Hole and slalom course, up to a total of \$25,000, which funding is to be administered by the SWAC and is to be made available within one year of new license issuance and acceptance for the Stewarts Bridge Project.

8.4 Reassessment of Benefit Charges by the Regulating District

This Settlement Offer recognizes the statutory right of the Regulating District to implement changes to its benefit assessments through appropriate Regulating District procedures, which procedures are to be outside the jurisdiction of any new licenses for the subject projects.

The Regulating District is reimbursed for operations and maintenance expenses associated with their operation of the Conklingville Dam and the Great Sacandaga Lake. Currently, these reimbursements are composed of the following elements:

- Charges to Erie for the E.J. West Project's use of head and water at the Regulating District's Conklingville Dam
- Charges for benefits to downstream hydroelectric facilities, including:

- Erie Boulevard Hydropower, L.P.
- Niagara Mohawk Power Corporation
- New York State Electric and Gas
- Stillwater Hydro Partners, L.P.
- Georgia-Pacific Corporation
- Fort Miller Associates
- Adirondack Hydro Development Corporation
- Finch, Pruyn & Company, Inc.
- International Paper Company

- Charges to municipalities for flood protection benefits, including:

- Village of Green Island
- City of Albany
- City of Watervliet
- City of Troy
- City of Rensselaer

The Signatories to this Settlement Offer understand that the assessment of charges is done by the Board of the Regulating District in a process defined within Article 15, Title 21 of the New York State Environmental Conservation Law. The Signatories recognize that since the original assessment of charges, the properties and entities potentially benefiting from the operation of Conklingville Dam have changed. Potential additional areas of benefit include but are not limited to wastewater assimilation, process and potable water supply, flood protection and recreation. In addition, the geographical area benefited by operation of Conklingville Dam may have expanded.

The Board of the Regulating District has initiated a reassessment procedure under Article 15, Title 21 of the New York State Environmental Conservation Law for the Hudson River. The Board of the Regulating District agrees to publish a public notice of this reassessment procedure, and to make a good faith effort to complete the reassessment

procedure in an expeditious manner, by June 30, 2000, or by the adoption of the next three-year budget, whichever first occurs.

9.0 SIGNATORIES

Individual signature pages for all signatories to this Settlement Offer are attached hereto.

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Adirondack Boardsailing Club, Inc.

By:

Richard H. Blackmer

Richard H. Blackmer

Title: Settlement Representative

Date:

March 10, 2000

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Adirondack Council

By:

Bernard C. Melewski

Bernard Melewski

Title: Counsel

Date:

March 20, 2000

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and ~~2554~~

Organization: Adirondack Mountain Club, Inc.

By: Betty Lou Bailey
Betty Lou Bailey

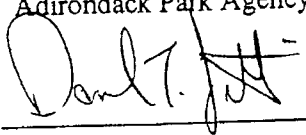
Title: Chrm., Canoe Route Subcommittee Conservation Committee

Date: March 29, 2000

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Adirondack Park Agency

By:



Daniel T. Fitts

Title: Executive Director

Date:

3/22/00

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Adirondack River Outfitters Inc.

By: Gary J. Staab
Gary Staab

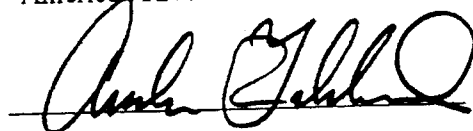
Title: Owner

Date: 3-15-2000

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: American Rivers

By:



Andrew Fahlund

Title: Director Hydro Programs

Date:

3/11/00

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: American Whitewater

By: Peter N. Skinner
Peter N. Skinner

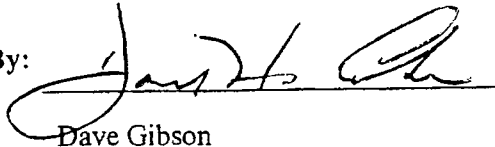
Title: Member, AW Board of Directors

Date: March 24, 2000

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

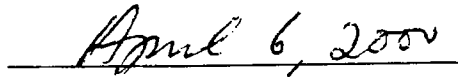
Organization: Association for the Protection of The Adirondacks

By:


Dave Gibson

Title: Executive Director

Date:


April 6, 2000

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Erie Boulevard Hydropower, LP

By: Janet M. Audunson

Janet M. Audunson

Title: General Manager, Orion Power New York, GP, Inc.
General Partner for Erie Boulevard Hydropower, LP

Date: 3-7-00

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Feeder Canal Alliance

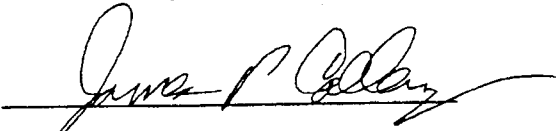
By: Christopher C. Reed
Christopher C. Reed

Title: Secretary

Date: March 10, 2000

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Fulton County Board of Supervisors

By: 
James P. Callery

Title: Vice Chairman

Date: 3/13/00

The signature contained on this page shall be valid only upon the following conditions being completed by the designated parties to this Agreement. Failure of compliance with these terms shall nullify and void the signature hereafter and compliance with the following terms are a material part of any Agreement contemplated herein.

The signature hereinafter shall be void unless:

1. The paragraph found on page 82 at line 29 through 33 and page 83 line one are deleted in their entirety from the Agreement filed with the Federal Energy Regulatory Commission and
2. The Hudson River Regulating District shall also sign this Agreement and file for a separate license with the Federal Energy Regulatory Commission.

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Glens Falls Chapter of Adirondack Mountain Club

By: jacqueline Bave
Jacqueline Bave

Title: Conservation Committee Chair

Date: 3/9/00

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Great Sacandaga Lake Association

By: Willard D. Roth
Willard D. Roth

Title: President

Date: Thurs 14 March, 2002

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Great Sacandaga Fisheries Federation, Inc.

By:

Randy R. Gardinier

Randy R. Gardinier

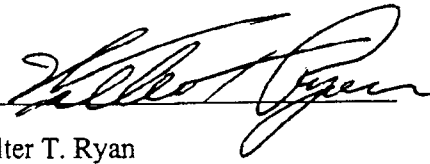
Title: Chairman

Date:

March 17, 2000

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Great Sacandaga Lake Marinas

By: 
Walter T. Ryan

Title: Chairman

Date: 3-10-2000

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Hudson River-Black River Regulating District

By: Thomas E. Brewer

Thomas E. Brewer, P.E.

Title: Chief Engineer

Date: 3/24/00

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Hudson River Rafting Co. Inc.

By:

P. J. Cunningham
Patrick J. Cunningham

Title: President

Date:

March 25, 2000

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: International Paper

By: T. J. Uncher
Tom Uncher

Title: Manager-Power, International Paper, Hudson River Mill

Date: 3/24/00

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: National Park Service


By: Chrysandra S. Walth
Marie Rust

Title: Regional Director, Northeast Region

Date: 3/22/00

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: New York Rivers United

By: 
Bruce Carpenter

Title: Executive Director

Date: 3/22/00

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: New York State Conservation Council, Inc.

By: Howard Cushing
Howard Cushing

Title: President

Date: March 15, 2000

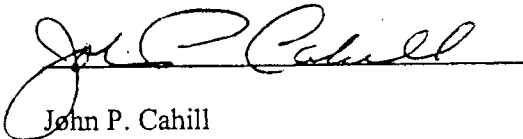
SETTLEMENT OFFER

UPPER HUDSON/SACANDAGA RIVER PROJECTS

FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: New York State Department of Environmental Conservation

By:


John P. Cahill

Title: Commissioner

Date:

4/3/00

SETTLEMENT OFFER

UPPER HUDSON/SACANDAGA RIVER PROJECTS

FERC PROJECT NUMBERS 2318, 2047, 2482 and 2554

Organization: Niagara Mohawk Power Corporation*

By: 
Thomas H. Baron

Title: Senior Vice President – Field Operations

Date: March 16, 2000

* Having sold its hydroelectric generating facilities on the Upper Hudson/Sacandaga Rivers on July 29, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk) has a very limited and finite interest and involvement in this Settlement Agreement. By executing this Settlement Agreement, Niagara Mohawk is indicating that its interest, rights and obligations in this Settlement Agreement are limited as follows:

- 1) any Niagara Mohawk land conveyance obligation for the South Side takeout in the Hadley Beach area below the Stewart's Bridge Project No. 2047, per Section 5.5.2.2.2 (p. 57), is premised upon the willingness of the transferee to take title prior to any improvements or construction and on terms and conditions acceptable to Niagara Mohawk, subject to any existing contractual rights to this property by the Open Space Institute (OSI), its successors and/or assigns; and
- 2) any Niagara Mohawk obligation(s) associated with Erie's provision of fishing access to the Sherman Island bypass reach from the area of the Potter Road Residential Subdivision being planned and proposed by Niagara Mohawk's land management and development subsidiary on the Town of Moreau side of the Sherman Island Development of Hudson River Project No. 2482, per Section 6.4.2.4 (pp. 71-72), is contingent upon FERC's issuance of a license amendment to the Sherman Island Development's project boundary that would exclude: (a) 11.7 acres of project lands from the project boundary for the Potter Road Residential Subdivision in the Town of Moreau, Saratoga County; and (b) a total of 23 acres of current project lands for water filtration plant expansion, Hudson Pointe PUD development and OSI gateway purposes in the Town of Queensbury, Warren County; and
- 3) the remaining duration of any of Niagara Mohawk's existing Federal Energy Regulatory Commission ("FERC") license responsibilities and rights up until the time that Erie Boulevard Hydropower, L.P. ("Erie") satisfies the FERC hydro license transfer conditions for Project No. 2047, 2318, 2482 and 2554 pursuant to ordering paragraph H of FERC's "Order Approving Transfers of Licenses, Partial Transfer of License, and Subdivision of Applicants", issued July 26, 1999 (88 FERC 62,082).

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Sacandaga Outdoor Center

By: 

John C. Duncan

Title: River Manager/President Sacandaga Outdoor Center

Date: 3-17-00

SETTLEMENT OFFER

**UPPER HUDSON/SACANDAGA RIVER PROJECT
FERC PROJECT NUMBERS 2318, 2047, 2482 and 2554**

The signature contained on this page shall be valid only upon the following conditions being completed by the designated parties to this agreement. Failure of compliance with these terms shall nullify and void the signature hereafter and compliance with the following terms are a material part of any agreement contemplated herein.

The signature hereinafter shall be void unless:

1. The paragraph found on page 82 at line 29 through 33 and page 83 line one are deleted in their entirety from the agreement filed with the Federal Energy Regulatory Commission and
2. The Hudson River Regulating District shall also sign this agreement and file for a license with the Federal Energy Regulatory Commission.

By: 
JOHN E. LAWLER, CHAIRMAN
SARATOGA COUNTY BOARD OF SUPERVISORS

Approved as to form and content by:


MARK M. RIDER
SARATOGA COUNTY ATTORNEY

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: Town of Hadley

By: Thomas Mason

Thomas Mason

Title: Supervisor

Date: 3-13-00

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: New York State Council, Trout Unlimited

By: Thomas R. Matias

Thomas R. Matias

Title: Counsel to the Committee on Hydro Relicensing,
New York State Council, Trout Unlimited

Date: March 21, 2000

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: U.S. Fish and Wildlife Service

By: Ronald Lambertson
Ronald Lambertson

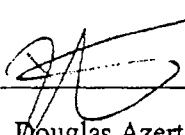
Title: Regional Director

Date: 3.16.01

SETTLEMENT OFFER
UPPER HUDSON/SACANDAGA RIVER PROJECTS
FERC PROJECT NUMBERS 2318, 2047, 2482, and 2554

Organization: W.I.L.D.W.A.T.E.R.S.

By:



Douglas Azert

Title: President

Date:

3/21/00



**New York Power
Authority**

April 10, 2000

Mr. Jerry Sabattis
Hydro Licensing Coordinator
Orion Power New York
225 Greenfield Parkway, Suite 201
Liverpool, NY 13088

Re: Erie Boulevard Hydropower, Upper Hudson/Sacandaga River
Settlement Offer

Dear Mr. Sabattis:

The Power Authority has received the March 8, 2000 final settlement offer for the Upper Hudson/Sacandaga River Projects. As a party to these proceedings, the Authority has no objection to the proposed settlement concerning these projects.

The Authority's interest in these proceedings is focused principally on the School Street Project, located on the Mohawk River, downstream from two of the Authority's projects. The Authority retains an interest in negotiations and settlement regarding the School Street Project.

Thank you for your consideration.

Very truly yours,

Beverly Ravitch
Principal Attorney

Cc: The Hon. Kevin J. Casutto, ALJ
W. Little, NYSDEC
J. Osinski, NYPA