

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 7000

NEWTON FALLS HYDROELECTRIC PROJECT  
OFFER OF SETTLEMENT

MAY 2002

**NEWTON FALLS HYDROELECTRIC PROJECT**  
**OFFER OF SETTLEMENT**

**Upper Development**  
**Lower Development**

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# **NEWTON FALLS HYDROELECTRIC PROJECT**

## **OFFER OF SETTLEMENT**

**Upper Development**  
**Lower Development**

### **1.0 INTRODUCTION**

#### *The Agreement and The Parties*

This agreement (the Offer of Settlement) dated as of May 2002, 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":

- Licensee
- Adirondack Mountain Club (ADK)
- Adirondack Park Agency (APA)
- American Rivers
- New York Rivers United (NYRU)
- New York State Department of Environmental Conservation (NYSDEC)
- U.S. Department of the Interior (DOI), U.S. Fish and Wildlife Service (USFWS)
- New York State Conservation Council (NYSCC)
- Adirondack Council
- Newton Falls Holdings, L.L.C., its successors or assigns

### 1.1 Term of the Offer of Settlement

This Offer of Settlement 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 including any annual licenses, thereafter.

### 1.2 Agreements to Be Incorporated As License Conditions

The agreements in the Offer of Settlement are a comprehensive, integrated, and indivisible set of measures intended to address non-power and power values relating to the licensing of the Upper and Lower Developments of the Newton Falls Hydroelectric Project. The Parties agree that each term of this Offer of Settlement is in consideration and support of every other term and that it is essential that the FERC, except where expressly noted to the contrary in this Offer of Settlement, incorporate as license conditions in the new license each of the commitments which the Licensee has agreed to undertake in Section 3.0 of this Offer of Settlement. "License conditions" are intended to mean numbered articles of the license.

### 1.3 Purpose and Goals

The purpose of this Offer of Settlement is to document the agreements that have been reached as the result of comprehensive discussions among the Parties with regard to the referenced hydroelectric developments with the re-license application filed with the FERC and the application for water-quality certification filed with the NYSDEC.

The goal of the Offer of Settlement is to provide for the continued operation of the subject developments with appropriate long-term environmental and recreational protection and mitigation measures that will meet diverse objectives for maintaining a balance of non-power and power values on the Oswegatchie River.

The Parties, having given careful and equal consideration to non-power and power values, provide in this Offer of Settlement 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 a new license and Water-Quality Certification for the subject developments.

#### 1.4 Project Decommissioning

This Offer of Settlement does not include any provisions relating to decommissioning or dam removal of the subject developments in whole or part. With or without amendment of this Offer of Settlement, any Party may seek such further relief from the FERC regarding such decommissioning as the FERC may order, recognizing that no Party to this Offer of Settlement has, or is, advocating decommissioning of any development or any of the project facilities at this time, nor does evidence currently exist which would suggest the need to advocate for decommissioning during the term of the license. If or when the subject project is decommissioned or retired during the term of the new license, the Parties will be entitled to take such positions on decommissioning issues at that time as they find appropriate.

#### 1.5 Successors and Assigns

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

#### 1.6 Parties To Support Regulatory Approvals

The Parties agree to support the issuance of a license and water-quality certification that is consistent with the terms of this Offer of Settlement. 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 Offer of Settlement. For those issues addressed herein, the Parties agree not to propose or otherwise communicate to the 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 Offer of Settlement. However, this Offer of Settlement shall not be interpreted to restrict any Party's participation or comments in future relicensing of the subject developments.

#### 1.7 Agency Appropriations

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

#### 1.8 Establishes No Precedents

The Parties have entered into the negotiations and discussions leading to this Offer of Settlement with the explicit understanding that this Offer 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 Offer of Settlement establishes no principles or precedents with regard to any issue addressed herein or with regard to any Party's participation in future relicensing proceedings and that none of the Parties to this Offer of Settlement will cite this Offer or its approval by the FERC, or the NYSDEC as establishing any principles or precedents except with respect to the matters to which the Parties have herein agreed.

#### 1.9 Conventions and Definitions

The Parties agree that the following conventions and definitions should have the meanings so noted throughout this Offer of Settlement.

**Base Flow:** The instream flow intentionally and continuously released below the project.

**Bypass Flow:** The instream flow intentionally and continuously released into a bypass reach.

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

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

**Impoundment Fluctuation:** Defined within this agreement as a specific range of impoundment elevations associated with normal project operation which is measured in the downward direction from a specific reference point (top of flashboards).

**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 the FERC issues a final license consistent with the terms of the Offer of Settlement relative to the particular enhancement being considered.

**Licensee:** Newton Falls Holdings, L.L.C., its successors or assigns.

**Normal Operation:** The daily operation of the Upper and Lower developments of the Newton Falls Project which may involve utilization of allowable impoundment fluctuations as needed to produce energy.



## **2.0    *GENERAL AGREEMENTS OF THE PARTIES***

### **2.1    License Term**

The Parties agree, based upon and in consideration of the Offer of Settlement provisions identified in Section 2.2, that the license should be for a term of 40 years from the date of license issuance, and agree to join in a request for rehearing if a license is issued for less than 40 years from the date of issuance.

### **2.2    Enforceability and Withdrawal Rights**

The Parties agree that it is their intent, and this Offer of Settlement is based upon, and in consideration of their expectation that Sections 3.1, 3.2, 3.3, 3.4, and 3.5.1 will be included in any license issued as numbered license articles and that the Commission will enforce these provisions. If, in making its licensing decision, the Commission determines that any of the sections identified herein are not within its jurisdiction to enforce, it will so expressly and clearly notify the Parties in the licensing order. If the Commission does not so expressly identify any of the provisions of the Sections identified herein, then the Parties will, in reliance thereon, proceed as though each of the Sections identified herein is enforceable by FERC.

In the event that the FERC should, contrary to the integrated and indivisible nature of this Offer of Settlement described herein in Section 1.2, issue a new license which materially and significantly modifies any of the commitments identified in Sections 3.1, 3.2, 3.3, 3.4, and 3.5.1 which the Licensee has agreed to undertake as part of this Offer of Settlement and in the event the new license is not thereafter satisfactorily modified as a result of the filing of a request for rehearing as provided in Section 2.3, and in the event any Party thereafter determines that its interests will be materially and adversely affected by the change or changes so made by the Commission, it may, after first providing written notice of its intention to do so to the other Parties together with a written explanation of its reasons for doing so, withdraw from this Offer of Settlement and thereafter the Offer of Settlement shall have no force and effect and the Parties shall

in any subsequent administrative and judicial proceedings take the position that the basis upon which the Commission's public interest determination was made in connection with the issuance of the new license and the new license should have no force and effect and should be considered null and void.

### 2.3 Rehearings and Judicial Review

The Parties agree that none of them will file a request with the FERC for rehearing of any new license unless the license (a) contains conditions which are materially inconsistent with the terms of this Offer of Settlement, (b) omits as license conditions terms of the Offer of Settlement which the Parties have agreed should be included as license conditions, or (c) the FERC determines that it will not enforce any of the provisions of the Offer of Settlement which the Parties have agreed should become enforceable conditions of the new license, as expressly identified in Section 2.2. In the event that any Party decides to file a request for rehearing in accordance with the terms of this provision, it will provide written notice of its intention to do so to the other Parties at the earliest practicable time and thereafter the other Parties will join in the rehearing request or file an appropriate and supportive rehearing request of their own. 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 support such a petition to the extent reasonably possible.

### 2.4 Water-Quality Certification — Withdrawal Rights

The NYSDEC will distribute to the Parties copies of the 401 certification that is issued. The Parties agree that they will support NYSDEC's issuance of a Section 401 Water-Quality Certification that is consistent with the provisions of this Offer of Settlement. In the event the NYSDEC issues a 401 certification for the project that is materially inconsistent with the provisions of this Offer of Settlement, any Party can withdraw from this Offer of Settlement 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.

## 2.5 Reopeners

The Parties agree that, except as provided herein, this Offer of Settlement is not intended to limit or restrict the ability of any Party to petition the FERC pursuant to any reopener condition contained in the new license, including any exercise by the Secretary of DOI relating to her/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 Offer of Settlement, or cause other portions of the Offer of Settlement to be reopened, unless the Party who files the petition has substantial evidence that a change in circumstances has occurred including any material change made by the Commission to the terms of this Offer of Settlement 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.

## 2.6 License Amendments

The Parties agree that, except as provided herein, nothing in this Offer of Settlement is intended to limit or restrict the ability of the Licensee to seek amendments of any new license. The Licensee may only seek a license amendment which would be materially inconsistent with the provisions of this Offer of Settlement 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 (using updated addresses as needed) 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 Offer of Settlement, the Licensee 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 Offer of Settlement, the Licensee shall document its consultation, summarize the positions and recommendations of the Parties, and provide its response to those positions and recommendations. The Licensee shall serve a copy of any application for amendment upon the Parties at the time of the filing. The Licensee will not oppose an intervention request filed in a timely manner by any Party in an amendment proceeding involving the license.

## **2.7 Fish Passage and Section 18**

The Parties agree that no fish passage measures should be required at this time, but the new FERC license for the developments should include the standard license article in which the Secretary of the Interior exercises [reserving the ability of the FERC to require such fish passage in the future and should include the full reservation of the Secretary of the Interior's] § 18 authority, by reserving the Secretary's authority to prescribe the construction, operation, and maintenance of such fishways as deemed necessary.

## **2.8 Offer of Settlement Amendments**

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

pursuant to the license. Any Party proposing such an amendment to this Offer of Settlement shall provide all Parties with at least 30 days written notice of the proposed amendment using updated addresses as needed. If requested to do so by any Party, the initiating Party shall consult with the other Parties regarding the proposed amendment for at least another 30 days. No amendment will be effective if any Party objects to the amendment. 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 either concur with or do not object to the proposed amendment, the Party making the proposal shall secure signed agreements to the amendment from all Parties who concur with the proposal. The Licensee will file the amendment with the FERC for informational purposes.

#### 2.9 Filings Prior to Issuance of New License

Prior to the issuance of the new license pursuant to this Offer of Settlement neither the Licensee nor any Party shall make any filing with the FERC seeking a modification of project works under license or of the operation of the project unless such a modification involves an emergency or is not materially inconsistent with this Settlement Offer and the Party who wishes to make the filing provides the other Parties at least 30 days notice of such a filing.

#### 2.10 Compliance With the Endangered Species Act

Consultation with the NYSDEC and the USFWS has established that, except for occasional transient individuals, no Federally- or state-listed threatened or endangered species are known to exist in the project impact area at this time.

#### 2.11 Project Boundary

Consistent with the existing license of the Newton Falls Hydroelectric Project, the Parties agree that the project boundary of the Upper Impoundment shall be established at elevation 1424.0 feet USGS (3 feet above spillway crest), and the project boundary of the

Lower Impoundment shall generally be established at elevation 1375.5 feet USGS (3 feet above spillway crest).

The Licensee may desire to raise the Upper Impoundment level to three (3) feet above permanent dam crest (elevation 1424.0 feet USGS) if conditions change during the term of the new license. At that time, the Licensee will enter into consultation with the Parties to raise the impoundment level and undertake the necessary studies to determine potential impacts.

**3.0 MEASURES WHICH THE LICENSEE WILL UNDERTAKE WITH RESPECT TO LICENSE CONDITIONS AND OTHER NON-LICENSE PROVISIONS OF SETTLEMENT**

**3.1 Impoundment Fluctuations and Flashboard Heights**

By January 2006, the Licensee shall limit impoundment fluctuations within the Upper and Lower developments as specified in Table 3-1.

<b>Table 3-1 Newton Falls Hydroelectric Project Normal Impoundment Fluctuations</b>			
<b>Development</b>	<b>Permanent Spillway Crest of Dam (USGS)</b>	<b>Flashboards</b>	<b>Normal Impoundment Fluctuation</b>
<b>Upper</b>	1421.0	2.3 feet <sup>(2)</sup>	1.0 feet <sup>(1)</sup> feet measured in downward direction from top of flashboards July 16 – April 30. 0.5 feet measured in downward direction from top of flashboards May 1 – July 15.
<b>Lower</b>	1372.5	1.5 feet	Run-of-river with limited fluctuation (0.3 feet below top of flashboards).

- (1) The Licensee may conduct post-licensing impoundment fluctuation studies to determine the potential of changing the fluctuation limit in consultation with the Parties during the term of the new license.
- (2) The Licensee may conduct post-licensing studies to determine the potential for changing the impoundment level in consultation with the Parties during the term of the license.

Normal impoundment fluctuations specified in Table 3-1 shall be defined as the maximum drawdown limit associated with the operating range necessary to achieve normal operation. The normal impoundment fluctuation limit shall be measured in the downward direction from the top of flashboards of each dam. Water surface elevations higher than the elevation from which any downward fluctuation is measured are considered outside of the normal impoundment fluctuation zone, and variations of same are not considered as a utilization of the normal impoundment fluctuation.

The Licensee may curtail or suspend these impoundment limitations if required by operating emergencies beyond its control and for short periods upon mutual agreement between the Licensee and the USFWS and NYSDEC. If the limitations are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten days after each such incident.

The Licensee may conduct post-licensing studies to determine the potential of changing the normal impoundment fluctuations and/or changing the Upper Impoundment level during the term of the new license. The design of such studies and any changes in normal impoundment fluctuations or levels are subject to the approval of the Parties.

#### 3.1.1 Justification for Impoundment Fluctuations Limitations

##### Upper Impoundment

In the absence of extensive impoundment fluctuation studies, the Parties agreed that a 1.0-foot daily fluctuation would have minimal impacts on the shallow littoral and wetland habitats surrounding the Upper Impoundment. A seasonal reduction to 0.5 feet from May 1 through July 15 will reduce impacts to centrarchids, northern pike, and other fish spawning in the impoundment, as well as to birds nesting along the shoreline.

##### Lower Impoundment

The Lower Impoundment essentially operates in a run-of-river regime, following the releases from the Upper Impoundment. Fluctuations in the impoundment from the Licensee's operations will be minimal (0 to 0.3 feet below top of flashboards), generally maintaining the level at or near the top of flashboards.



## 3.2 Instream Flows

### 3.2.1 Minimum Base Flow Below Lower Development

A minimum base flow of 100 cfs or inflow, whichever is less, shall be maintained in the Oswegatchie River below the Lower Development. This minimum base flow can be comprised of discharges through the turbine at the Lower Development, discharges at the Lower Dam, and the fish movement/bypass flows specified in Section 3.2.2. This minimum flow requirement is a continuation of a requirement under the current FERC license for the project.

### 3.2.2 Fish Movement/Bypass Flows

The Licensee shall release the minimum bypass flows specified in Table 3-2 (or inflow to the project, whichever is less) from a point located at the respective dam of each development. The specified bypass flows are to be released through the proposed downstream fish movement facilities and are independent of any leakage through gates, etc. at the dam. The Parties agree that these flows provide adequate conveyance flows for the proposed downstream fish movement facilities, as well as habitat protection and fish movement flows for the bypassed reaches.

<b>Table 3-2 Newton Falls Hydroelectric Project Bypass Flow Schedule</b>		
<b>Development</b>	<b>Flow Magnitude</b>	<b>Start Date</b>
Upper	20 cfs	January 2006
Lower	20 cfs	January 2008

The Licensee shall derive appropriate gate settings, or other agreed upon measures, for the provision of the bypass flow at each development. The

Licensee shall release each bypass flow from a point located at the dam of each development.

### 3.2.2.1 Justification for Fish Movement/Bypass Flows

#### Upper Development

A Demonstration Flow Study was performed to assess the appropriate flows for the bypassed reach. Limited habitat for smallmouth bass spawning or fallfish was available at any flow. All other target organisms exhibited increased habitat with increasing flows up to 30 cfs. No improvements were seen as flows were increased above 30 cfs. Smallmouth bass adult and juvenile habitat demonstrated moderate increases when flows were increased from 20 cfs to 30 cfs.

The primary use of this bypassed reach is to provide forage. Both macroinvertebrate habitat and habitat for riffle-dwelling species (represented by longnose dace) showed significant increases with increasing flow from leakage to 30 cfs. Fish movement was limited at leakage, but maximized at flows of 20 cfs and higher.

The USFWS' engineering guidelines for downstream fish movement require a minimum conveyance flow of 20 cfs. This flow will provide adequate habitat to meet the management objectives of the bypassed reach. Since the flow through the fish movement structure is discharged to the bypassed reach, the bypassed reach will always receive at least 20 cfs plus leakage.

#### Lower Development

The USFWS' engineering guidelines for downstream fish movement require a minimum conveyance flow of 20 cfs. Although conditions did not permit observations of a variety of flows through this bypassed reach, the Parties concluded, based in part on videotapes of 20 cfs, that the 20 cfs fish conveyance

flow would be adequate for this relatively short bypassed reach. This flow will allow fish movement throughout the bypassed reach, while increasing macroinvertebrate habitat and forage fish habitat.

### 3.2.3 Emergency Exceptions

The Licensee may curtail or suspend the instream flow requirements of Sections 3.2.1 and 3.2.2, if required by operating emergencies beyond the control of the Licensee, and for short periods upon mutual agreement between the Licensee, USFWS and NYSDEC. If the flows are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten days after each such incident.

### 3.3 Flow and Water Level Monitoring

The Licensee shall develop a stream-flow and water-level monitoring plan in consultation with the NYSDEC and the USFWS by January 2006. The monitoring plan shall include all necessary gages and/or equipment to:

- Determine the instream flow releases of the Upper and Lower developments of the Newton Falls Project at appropriate locations.
- Determine headpond elevations as needed for instream flow verification.
- Provide an appropriate means of independent verification of water levels by the NYSDEC and USFWS.

All gaging and ancillary equipment required by the monitoring, including headpond gages, shall be made operational and fully calibrated by October 2006.

The dates provided in this section will not be extended without prior consultation with all Parties.

The monitoring plan will contain provisions for the installation of staff gages at appropriate locations to permit independent verification of headpond levels to the nearest 0.1-foot. These locations will be selected in consultation with the USFWS and NYSDEC. The Licensee will make reasonable efforts to install the staff gages where they will be visible to the general public. Access to staff gages shall be provided to the NYSDEC, the USFWS, and/or their authorized representatives.

The Licensee shall keep accurate and sufficient records of the impoundment elevations and instream flows to the satisfaction of the NYSDEC and shall provide such data in a format and at intervals as required by the NYSDEC. All records will be made available for inspection at the Licensee's principal business office within New York State within five (5) business days or will be provided in written form within 30 days of the Licensee's receipt of a written request for such records by the NYSDEC. Furthermore, the Licensee 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.

The Licensee shall keep accurate and sufficient records of any uncontrollable station outage that causes a reduction in the required instream flows at the Upper and Lower developments. The Licensee will consult with the NYSDEC to develop a plan for reporting these types of incidents. The reporting plan shall be finalized by January 2006.

#### 3.4 Fish Protection and Downstream Movement

The existing trashracks at each development shall be replaced or modified with fish-protection measures specified in Table 3-3 and in accordance with the schedule proposed in Table 3-3.

<b>Table 3-3 Newton Falls Hydroelectric Project Downstream Fish Movement and Protection Measures</b>			
<b>Development</b>	<b>Protection<sup>(1)</sup> Measure/Schedule</b>	<b>Downstream Movement Routes</b>	<b>Conveyance System</b>
Upper	1-inch clear spacing trashracks installed by January 2008	Spillway, sluiceway, and gates.	Plunge pools, smooth transitions, channel modifications, etc.
Lower	1-inch clear spacing trashracks installed by January 2008	Spillway and gates.	Plunge pools, smooth transitions, channel modifications, etc.

(1) 1-inch clear opening trashracks may be permanent or overlays installed seasonally (May 1 through November 15)

The Licensee shall provide downstream fish movement facilities in consultation with NYSDEC and USFWS by January 2006 at the Upper Dam and January 2008 at the Lower Dam. A minimum conveyance flow of 20 cfs (see Section 3.2.2) is to be provided for the downstream fish movement facilities at both the Upper and Lower Dams.

For the term of the new license, the Licensee shall not be required to (1) test the effectiveness of any, or all, components of existing and future protection or fish movement measures and/or structures, (2) make qualitative or quantitative determinations of fish entrainment and/or mortality, (3) provide compensation for any fish entrainment and/or mortality, or (4) provide upstream fish passage facilities, except as provided in the next paragraph.

The Licensee shall not be required to increase the level of protection and movement as agreed to by this Offer of Settlement for the term of the license, unless prescribed by the U.S. Department of the Interior under Section 18 of the Federal Power Act (see Section 2.7).

The Licensee may curtail or suspend the requirements of this commitment if required by operating emergencies beyond the control of the Licensee, and for short periods upon mutual agreement between the Licensee, USFWS and NYSDEC. If the requirements of this commitment are so modified, the Licensee shall notify the FERC, USFWS, and NYSDEC as soon as possible, but no later than ten days after each such incident.

#### 3.4.1 Justification

The existing trashracks at the Upper Development have 2 inch clear spacing between vertical bars and its location does not create an area of high velocity in front of the intake (maximum approach velocities estimated at 1.8 fps). The existing trashracks at the Lower Development have 2 inch clear spacing between vertical bars and its location does not create an area of high velocity in front of the intake (maximum approach velocities estimated at 2.0 fps).

When the existing trashracks at each development are replaced, or modified, either on a permanent or seasonal (May 1-November 15) basis, they will be replaced/modified with trashracks having 1.0 inch clear spacing, which will deter most adult game fish from entering the intake. These devices may also behaviorally deter smaller fish that generally have a higher survival rate during turbine passage.

### 3.5 Recreation

The recreational opportunities provided by this Offer of Settlement supplement the existing recreational opportunities in the Newton Falls Project area, and will provide public access to, and use of, the impoundments, and some adjacent lands associated with the Upper and Lower developments.

#### 3.5.1 Recreational Enhancement Commitments To be Included in the License

By January 2006, the Licensee shall implement all recreation enhancements specified below.

- (a) Car-top Boat Launches: The Licensee shall construct a small, gravel car-top boat launch just west of the town beach along with a gravel parking area to accommodate 5-6 cars adjacent to the boat launch with appropriate signage,

including a 10 HP motor limitation sign. A picnic table will be provided at this access area. Additionally, an informal car-top boat launch, currently existing about one mile east of the town beach, shall be improved with gravel and the Licensee shall install appropriate signage, including a 10 HP motor limitation sign. Roadside parking immediately east of the boat launch currently exists.

(b) Canoe Portage: Licensee shall provide a canoe portage route commencing at a take-out in the upper impoundment. The take-out shall be located on the right side of the upper impoundment approximately 300 feet upstream of the dam. The portage shall utilize existing roadways, improved for the portage, to the put-in into the lower impoundment, approximately 150 feet downstream of the bridge. Recreationists can traverse the lower impoundment to the take-out on the left side, just upstream of the dam. For continuation of the canoe route, recreationists shall put-in, approximately 150 yards downstream of the lower dam, just downstream of the confluence of the tailrace with the bypassed reach. Licensee to continue to consult with ADK on the design and location of the portage trail.

(c) Public Access: The Licensee shall allow public access to all lands within the FERC project boundary associated with each development covered by this Offer of Settlement, with the exception of those lands and facilities specifically related to hydroelectric generation where public safety would be a concern. Lands and facilities where public access will be precluded may include, but are not necessarily limited to, dams, dikes, gates, intake structures, water conveyance structures, powerhouses, substations, transmission lines, and certain access roads leading to such facilities.

(d) Future Recreational Opportunities: The Licensee shall work with signatories to this Offer of Settlement to examine further reasonable opportunities to develop access to project lands or waters when, and if, the need arises.

(e) **Whitewater Opportunities:** The Parties agree that the Licensee shall not be required by this Offer of Settlement, or articles of license, to supply whitewater releases downstream of the Newton Falls Project.

(f) **Recreation Monitoring:** The Licensee shall not be required to monitor the use of recreational facilities included in this Offer of Settlement beyond the requirements of the FERC's Form 80 reporting.

(g) **Operating Emergencies:** The Licensee may curtail or suspend recreation measures if required to by operating emergencies beyond the control of the Licensee, and for short periods upon mutual agreement between the Licensee and the NYSDEC. If such suspension of measures occurs under emergency conditions, the Licensee shall notify the NYSDEC as soon as possible, but no later than ten days after each such incident.

### 3.5.2 Recreational Enhancements to be Excluded from License

By January 2005, Newton Falls Holding, L.L.C. agrees to transfer (donate) the fee title of a parcel of land containing portions of Chaumont Swamp (see attached map) to the State of New York, or other appropriate organization if the State of New York declines the offered donation. This donation by Newton Falls Holdings, L.L.C. will include preparation of a survey and deed for this purpose. The deed will provide for open access to the land in perpetuity for general public use for all passive recreation, including hunting, bird watching, snowshoeing, etc. The parcel of land to be donated is not within the existing project boundary and is not to be included in the project boundary for a new FERC license for the Newton Falls Hydroelectric Project.

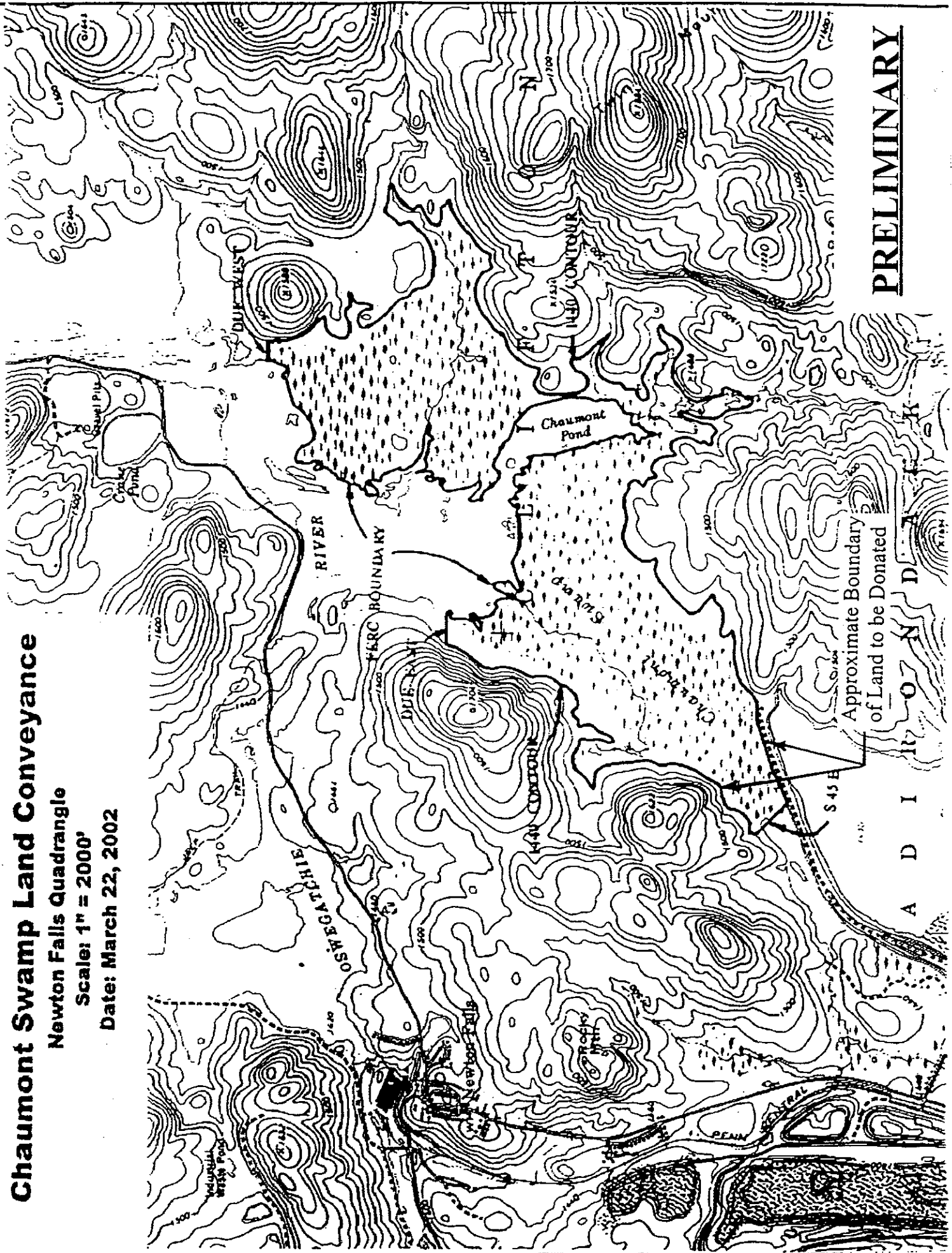


# Chaumont Swamp Land Conveyance

Newton Falls Quadrangle

Scale: 1" = 2000'

Date: March 22, 2002

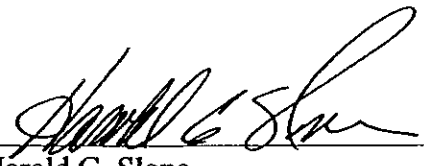


#### **4.0    *SIGNATURE PAGES***

RECEIVED JUN 4 2002

OFFER OF SETTLEMENT  
NEWTON FALLS HYDROELECTRIC PROJECT  
FERC PROJECT NO. 7000

NEWTON FALLS HOLDINGS, L.L.C.

By:   
Harold G. Slone

Title: Manager

Date: 5/30/02

**OFFER OF SETTLEMENT  
NEWTON FALLS HYDROELECTRIC PROJECT  
FERC PROJECT NO. 7000**

**U.S. Fish and Wildlife Service**

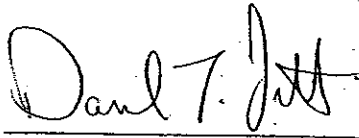
By: *M. A. Parker*  
Mamie A. Parker

Title: Regional Director

Date: JUN 24 2002

**OFFER OF SETTLEMENT  
NEWTON FALLS HYDROELECTRIC PROJECT  
FERC PROJECT NO. 7000**

**Adirondack Park Agency**

By:   
Daniel T. Fitts

Title: Executive Director

Date: July 11, 2002

**OFFER OF SETTLEMENT  
NEWTON FALLS HYDROELECTRIC PROJECT  
FERC PROJECT NO. 7000**

**New York State Department of Environmental Conservation**

By:   
Peter Duncan

Title: Deputy Commissioner for Natural Resources

Date: 1 April 02

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OFFER OF SETTLEMENT  
NEWTON FALLS HYDROELECTRIC PROJECT  
FERC PROJECT NO. 7000

New York Rivers United

By:

  
Bruce Carpenter

Title: Executive Director

Date:

5/28/02

**OFFER OF SETTLEMENT  
NEWTON FALLS HYDROELECTRIC PROJECT  
FERC PROJECT NO. 7000**

**New York State Conservation Council**

By: Howard Cushing  
Howard Cushing

Title: President

Date: 6/1/2002



**OFFER OF SETTLEMENT  
NEWTON FALLS HYDROELECTRIC PROJECT  
FERC PROJECT NO. 7000**

**Adirondack Mountain Club**


By: Betty Low Bailey  
Betty Low Bailey

Title: Chairman, Canoe Route Subcommittee  
Conservation Committee

Date: June 3, 2002

**OFFER OF SETTLEMENT  
NEWTON FALLS HYDROELECTRIC PROJECT  
FERC PROJECT NO. 7000**

**American Rivers**

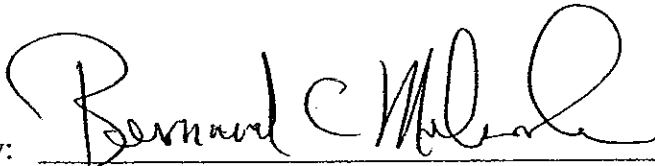
By:   
Andrew Fahlund

Title: Director of Hydropower Programs

Date: 6/3/02

**OFFER OF SETTLEMENT  
NEWTON FALLS HYDROELECTRIC PROJECT  
FERC PROJECT NO. 7000**

**Adirondack Council**

By:   
Bernard Melewski

Title: Acting Executive Director

Date: June 17, 2002

## **5.0 Contact List of Parties Taking Part in the Offer of Settlement**

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**Erie Boulevard Hydro, L.P.**

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