

Review of Application
for
LIHI Certification of the
Newton Falls Hydroelectric Project
St. Lawrence County, New York

Prepared by
Fred Ayer, Executive Director

Introduction and Overview

This report reviews the application submitted by Brookfield Power to the Low Impact Hydropower Institute (LIHI) for Certification of the Newton Falls Hydro Project (FERC# 7000). The Newton Falls Project is located on the Oswegatchie River, in the town of Clifton, St. Lawrence County, New York. The Oswegatchie River is navigable from its mouth on the St. Lawrence River at Ogdenbury, to Cranberry Lake (about River mile 110), including the reach of the river in which the project is located (about river mile 98).

The Newton Falls Project consists of the Upper Development and the Lower Development. The 2.22-megawatt (MW) Newton Falls Hydroelectric Project generates approximately 9,500,000 kilowatt-hours (kWh) of electricity annually.

The Project's federal license was recently renewed. FERC issued public notice of Brookfield's relicensing application on April 5, 2002, indicating that the application for a new license for the project had been accepted for filing and setting June 4, 2002, as the deadline for filing comments, protests, and motions to intervene. The U.S. Department of the Interior (Interior), the New York State Department of Environmental Conservation (NYSDEC), the Adirondack Mountain Club (ADK), the Adirondack Council, American Rivers, Inc., New York Rivers United (NYRU), and the Natural Heritage Institute filed timely motions to intervene, but did not oppose the project.

Brookfield Power filed a Settlement Agreement (Settlement) with the FERC on July 16, 2002, for proposed protection, mitigation, and enhancement measures at the Newton Falls Project. Signatories of the Settlement besides the Applicant are the U.S. Fish and Wildlife Service (FWS), NYSDEC, Adirondack Park Agency, Adirondack Council, ADK, American Rivers, NYRU, and the New York State Conservation Council.

Project Description

The existing Newton Falls Project consists of the Upper Development and the Lower Development. The Upper Development, which operates in a storage-and-release peaking mode,

consists of a 600-foot-long, 40-foot-high, concrete dam; a 650-acre reservoir; a 1,200-foot-long bypassed reach, a 1,200-foot-long penstock; a 375-foot-long 2.3-kilovolt (kV) transmission line; and a powerhouse containing 3 turbine/generator units with a total rated capacity of 1.54 MW. The Upper Development's powerhouse discharges directly to the reservoir of the Lower Development.

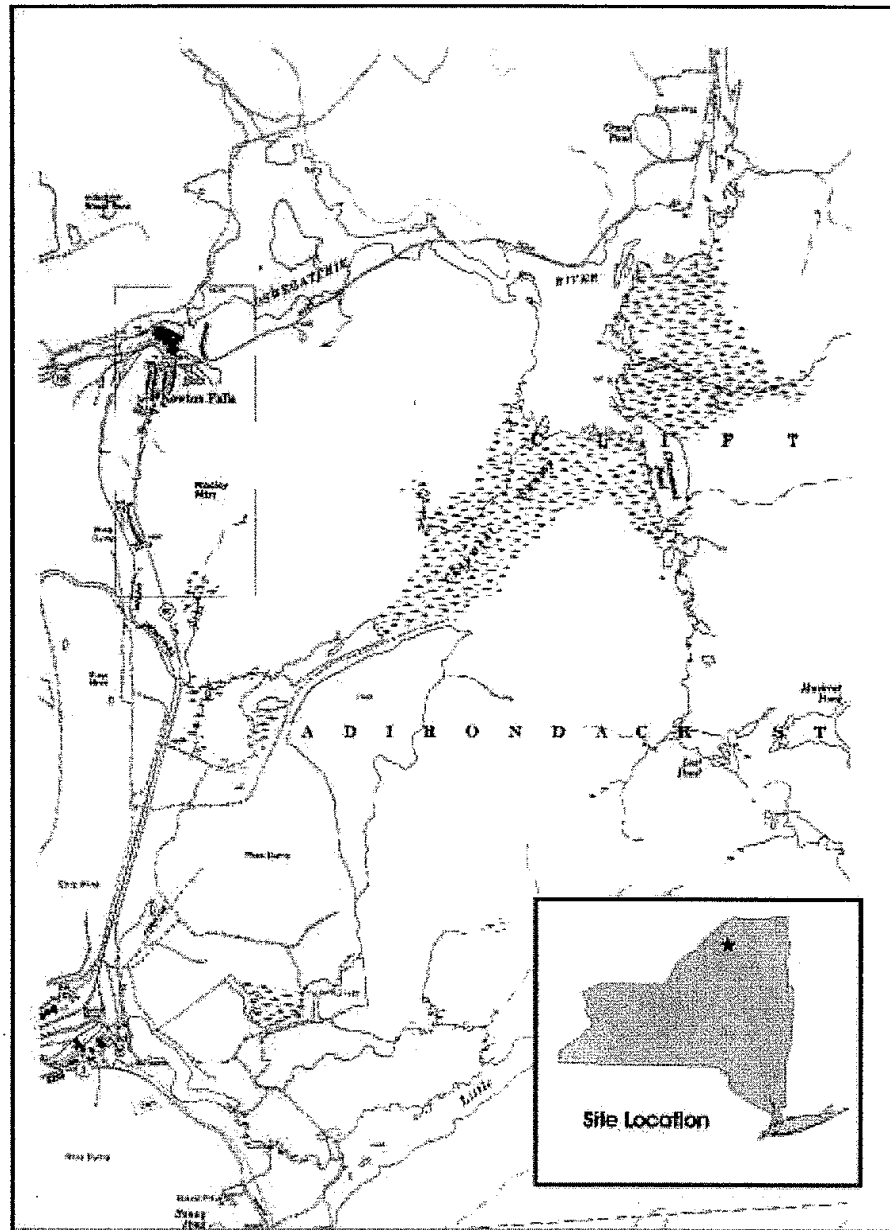


Figure 1 Location of the Newton Falls Hydroelectric Project

The Lower Development, which operates in a run-of-river mode, consists of a 350-foot-long, 25-foot-high concrete dam; a 9-acre reservoir; a 300-foot bypassed reach; a 2,200-foot-long, 2.3-kV transmission line; and a powerhouse containing one turbine/generator unit with a rated capacity of 680 kilowatt (kW).

The Settlement Agreement

The Settlement incorporates agreements reached among the parties to the Settlement (Parties) with regard to the Upper and Lower Developments. The stated goal of the Settlement is to provide for the continued operation of the developments with appropriate long-term environmental and recreational protection and mitigation measures. The Parties provide in the Settlement recommended terms and conditions for the resolution of operational, fisheries, wildlife, water quality, and recreational issues applicable to the issuance of a new license and a water quality certificate (WQC) for the Project.

Section 1 of the Settlement states the effective date of the agreement, the agreement's continued effectiveness throughout the term of the license, and the purpose of settlement. Section 1 also provides a set of definitions and conventions and stipulates the Parties intent to support issuance of a license consistent with the terms of the agreement.

Section 1.2 of the Settlement states the Parties' intent that the license condition provisions of Section 3 of the Settlement be included in numbered license articles. However, FERC's policy requires placing provisions (such as the Section 3 provisions) that are mandatory license provisions (here, because they are included as requirements of the water quality certification for the project) verbatim in appendices, and incorporating the provisions by reference in ordering paragraphs. Nevertheless, the provisions are incorporated in numbered license articles for the purpose of adding basic requirements to enable the FERC to enforce the provisions. However, these articles do not purport to, and indeed cannot, alter or override mandatory conditions, but rather are meant to be complementary to them.

Section 2 of the Settlement states the Parties' agreement to support the issuance of a new license with a 40 year term, and proposes a condition reserving the Commission's authority to require the construction, operation, and maintenance of such fishways as may be prescribed by Interior. The Parties propose to establish the project boundary of the Upper Development at elevation 1424.0 feet National Geodetic Vertical Datum (NGVD), and at the Lower Development at elevation 1375.5 feet NGVD.

Section 3 of the Settlement sets forth proposed impoundment fluctuation ranges, flashboard heights, fish protection bypass flows, minimum flows for the Lower Development, fish protection measures to facilitate downstream fish movement, and measures to improve public access and enhance recreational opportunities at the project. Also, in Section 3, the prospective licensee agrees to develop a stream flow and water level monitoring plan.

In FERC's Environmental Assessment (EA), they evaluated the measures proposed in the Settlement and concluded that the measures would adequately protect and enhance fishery, recreational, and other resources affected by the project.

LIHI HYDROPOWER CERTIFICATION CRITERIA

Goals, Standards and Applicant's Responses

The Low Impact Hydropower Institute certifies those hydropower facilities that meet its eight criteria:

A. River Flows:

Goal: *The facility (dam and powerhouse) should provide river flows that are healthy for fish, wildlife, and water quality, including seasonal flow fluctuations where appropriate.*

Standard: *For instream flows, a certified facility must comply with recent resource agency recommendations¹ for flows. If there were no qualifying resource agency recommendations, the applicant can meet one of two alternative standards: (1) meet the flow levels required using the Aquatic Base Flow methodology or the “good” habitat flow level under the Montana-Tennant methodology; or (2) present a letter from a resource agency prepared for the application confirming the flows at the facility are adequately protective of fish, wildlife, and water quality.*

Instream Flows – The Applicant as part of the Settlement Agreement has committed to the following:

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.

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.

¹ “recent resource agency recommendations” are defined as final recommendations made by state, federal, or tribal resource agencies in a proceeding, such as a Federal Energy Regulatory Commission (FERC) licensing proceeding. Qualifying agencies are those whose mission includes protecting fish and wildlife, water quality and/or administering reservations held in the public trust. Agencies such as a state or tribal department of fish and game, or the U.S. Fish and Wildlife Service are considered a “resource agency” but the FERC, with its balancing responsibilities, is not. The agency recommendations must be recent, which means they were issued after 1986 (after enactment of the Electric Consumers Protection Act, which amended the Federal Power Act to increase the profile of recommendations from fish and wildlife agencies in the FERC licensing process). If there are a number of resource agency recommendations, then the most stringent (most environmentally protective) is used. In the case of settlement agreements, the final settlement terms will be considered the agency’s “recommendation.”

Table 3-2 Newton Falls Hydroelectric Project Bypass Flow Schedule		
Development	Flow Magnitude	Start Date
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.

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.

Emergency Exceptions

The Licensee may curtail or suspend the instream flow requirements 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 modified, the Licensee shall notify the FERC as soon as possible, but no later than ten days after each such incident.

Flow and Water Level Monitoring - The Licensee developed a stream-flow and water-level monitoring plan in consultation with the NYSDEC and the USFWS which was completed in January 2006. The monitoring plan includes all necessary gauges 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.

While gauging and ancillary equipment required by the monitoring, including headpond gages, was made operational and is fully calibrated for the Upper facility, completion of the Lower facility was delayed and should be completed in 2008.

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

The Licensee keeps records of the impoundment elevations and instream flows for the NYSDEC and provides such data in a format and at intervals required by the NYSDEC. All records are made available for inspection at the Licensee's principal business office within New York State within five (5) business days or the data will be provided in written form within 30 days of the Licensee's receipt of a written request by the NYSDEC. Furthermore, the Licensee will provide 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 will 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 was finalized in January 2006.

A. Flows – The Facility is in Compliance with Resource Agency Recommendations issued after December 31, 1986 regarding flow conditions for fish and wildlife protection, mitigation, and enhancement for both the reach below the tailrace and all bypassed reaches. FACILITY PASSES.

B. Water Quality:

***Goal:** Water quality in the river is protected.*

***Standard:** The water quality criterion has two parts. First, a facility must demonstrate that it is in compliance with state water quality standards, either through producing a recent (after 1986) Clean Water Act Section 401 certification, or demonstrating compliance with state water quality standards (typically by presenting a letter prepared for the application from the state confirming the facility is meeting water quality standards). Second, a facility must demonstrate that it has not contributed to a state finding that the river has impaired water quality under Clean Water Act Section 303(d) (relating to water quality limited streams).*

On January 31, 2002, NFH applied to the NYSDEC for a Water Quality Certification (WQC) for the Newton Falls Project, as required by Section 401 of the Clean Water Act. The NYSDEC received the request for a WQC on January 31, 2002, and issued a WQC for the Newton Falls Project, consistent with the provisions of the Settlement, on December 20, 2002. The WQC requires that Brookfield meet all the terms and conditions of the Settlement relating to water quality, 20 NYSDEC general and special conditions for the protection of water quality under state regulations implementing section 401, and a special condition for providing public access and recreational opportunities in conformance with the Settlement.

In issuing the WQC, the New York State Department of Environmental Conservation among other things certifies:

the Department has reviewed the certificate holder's Application for Federal Hydroelectric License (hereafter referred to as "the Application") and all other available pertinent information, including the Offer of Settlement filed with the Federal Energy Regulatory Commission (FERC) in July 2002; and,

the Project will comply with Sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act as amended and as implemented by the limitations, standards and criteria of the state statutory and regulatory requirements set forth in 6NYCRR Section 608.9(a).

B. Water Quality – The Facility is in Compliance with all conditions issued pursuant to a Clean Water Act §401 in the Facility area and in the downstream reach. The downstream reach is not identified by the state as not meeting water quality standards (including narrative and numeric criteria and designated uses) pursuant to Section 303(d) of the Clean Water Act. FACILITY PASSES

C. Fish Passage and Protection:

Goal: *The facility provides effective fish passage for riverine, anadromous and catadromous fish, and also protects fish from entrainment.*

Standard: *For riverine, anadromous, and catadromous fish, a facility must be in compliance with recent (after 1986) mandatory prescriptions regarding fish passage (such as a Fish and Wildlife Service prescription for a fish ladder) as well as any recent resource agency recommendations regarding fish protection (e.g., a tailrace barrier). If anadromous or catadromous fish historically passed through the facility area but are no longer present, the applicant must show that the fish are not extirpated or extinct in the area because of the facility and that the facility has made a legally binding commitment to provide any future fish passage recommended by a resource agency.*

When no recent fish passage prescription exists for anadromous or catadromous fish, and the fish are still present in the area, the facility must demonstrate either that there was a recent decision that fish passage is not necessary for a valid environmental reason, that existing fish passage survival rates at the facility are greater than 95% over 80% of the run, or provide a letter prepared for the application from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service confirming the existing passage is appropriately protective.

Fish Passage Requirements - Section 18 of the Federal Power Act (FPA) provides that the FERC shall require the construction, operation, and maintenance by a licensee of such fishways as the Secretaries of Commerce or the Interior may prescribe. By letter dated December 20, 2002, Interior requested that the FERC reserve, in any license issued for the Newton Falls Project, Interior's authority to prescribe fishways. Consistent with the FERC's policy, Article 405 of this license reserves the FERC's authority to require such fishways as may be prescribed by Interior for the Newton Falls Project.

Agency Recommendations - 10(j)(1) of the FPA requires the FERC, when issuing a license, to include license conditions based on the recommendations of the federal and state fish and wildlife agencies, submitted pursuant to the Fish and Wildlife Coordination Act, to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by the project. On December 23, 2002, Interior filed section 10(j) recommendations for the Newton Falls Project, which were generally consistent with the provisions of the Settlement. The conditions of this license are consistent with Interior's 10(j) recommendations and the settlement.

C. Fish Passage and Protection – The facility is in Compliance with Mandatory Fish Passage Prescriptions for upstream and downstream passage of anadromous and catadromous fish issued by Resource Agencies after December 31, 1986 - FACILITY PASSES.

D. Watershed Protection:

Goal: Sufficient action has been taken to protect, mitigate and enhance environmental conditions in the watershed.

Standard: A certified facility must be in compliance with resource agency recommendations and FERC license terms regarding watershed protection, mitigation or enhancement. These may cover issues such as shoreline buffer zones, wildlife habitat protection, wetlands protection, erosion control, etc. The Watershed Protection Criterion was substantially revised in 2004. The revised criterion is designed to reward projects with an extra three years of certification that have: a buffer zone extending 200 feet from the high water mark; or, an approved watershed enhancement fund that could achieve within the project's watershed the ecological and recreational equivalent of land protection in D.1. and has the agreement of appropriate stakeholders and state and federal resource agencies. A Facility can pass this criterion, but not receive extra years of certification, if it is in compliance with both state and federal resource agencies recommendations in a license approved shoreland management plan regarding protection, mitigation or enhancement of shorelands surrounding the project.

The Project is in compliance with agency recommendations in a license approved (Article 408) shoreline management plan regarding protection, mitigation or enhancement of shorelands surrounding the project.

On May 19, 2005, the FERC issued an order Approving the Shoreline Erosion Monitoring Plan which the Applicant had prepared pursuant to Article 408 of the FERC License Order.

D. Watershed Protection – The facility is in compliance with both state and federal resource agencies recommendations in a license approved shoreland management plan regarding Protection, mitigation, and enhancement of shorelands surrounding the Project - FACILITY PASSES

E. Threatened and Endangered Species Protection:

Goal: The facility does not negatively impact state or federal threatened or endangered species.

Standard: For threatened and endangered species present in the facility area, the facility owner/operator must either demonstrate that the facility does not negatively affect the species, or

demonstrate compliance with the species recovery plan and any requirements for authority to “take” (damage) the species under federal or state laws.

In an October 22, 2002 letter to the United States Fish and Wildlife Service (USFWS), the Applicant requested information on the presence of Federally listed or proposed endangered or threatened species in the vicinity of the Newton Falls Hydroelectric Project on the Oswegatchie River in the Town of Clifton, St Lawrence County, New York. The USFWS responded:

“Except for occasional transient individuals, no Federally listed or proposed endangered or threatened species under our jurisdiction are known to exist in the project impact area. In addition, no habitat in the project impact area is currently designated or proposed “critical habitat” in accordance with provisions of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Therefore, no Biological Assessment or further Section 7 consultation under the Endangered Species Act is required with the U.S. Fish and Wildlife Service (Service). Should project plans change, or If additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered.”

<p>E. Threatened and Endangered Species Protection – Except for the occasional transient no threatened or endangered species or their critical habitat listed under state or federal Endangered Species Acts are present in the Facility area. FACILITY PASSES.</p>
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F. Cultural Resource Protection:

Goal: *The facility does not inappropriately impact cultural resources.*

Standard: *Cultural resources must be protected either through compliance with FERC license provisions, or, if the project is not FERC regulated, through development of a plan approved by the relevant state, federal, or tribal agency.*

The Applicant has accepted and committed to the following Article in the Project’s FERC License:

Article 408. The licensee; before starting any land-clearing or land-disturbing activities within the project boundaries, other than those specifically authorized in this license, shall consult with the New York State Historic Preservation Officer (SHPO). If the licensee discovers previously unidentified archeological or historic properties during project operation, during the course of constructing or developing project works or other facilities at the project, or during the course of shoreline erosion monitoring, the licensee shall consult with SHPO.

Moreover, within 6 months after the effective date of the license, the licensee shall consult with the SHPO and file for Commission approval a shoreline erosion monitoring plan. With the filing, the licensee shall include the SHPO's comments and recommendations on the shoreline

erosion monitoring plan, and specific descriptions of how the SHPO's comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the SHPO to comment and to make recommendations prior to filing the plan with the Commission for approval. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The shoreline erosion monitoring plan, at a minimum, shall include the following provisions:

- (1) initial reconnaissance of portions of the Upper Development's reservoir shoreline to establish a baseline to compare future erosion conditions in areas of concern identified by the SHPO, which are the flat areas adjacent to the upper end of the Upper Development reservoir;
- (2) follow-up comparative reconnaissance monitoring of the Upper Development's reservoir shoreline area following the occurrence of an extreme flow event (Upper Development's reservoir elevations greater than 1,424 feet NGVD); and
- (3) reconnaissance and monitoring of the area of concern by responsible personnel of the licensee as defined by the SHPO.

In the event significant signs of erosion are discovered, the licensee shall, within 30 days of the discovery, consult further with the SHPO to determine what further actions and/or investigations, if any, are needed, and file the results of this consultation (e.g., any supplemental plan developed in consultation with the SHPO, the SHPO's comments on any such plan, the licensee's response to the SHPO's comments). The licensee shall take no further action that may foreclose the Commission's opportunity to direct changes to the filing until notified by the Commission that the filing is approved.

On May 19, 2005, the FERC issued an order Approving the Shoreline Erosion Monitoring Plan which the Applicant had prepared pursuant to Article 408 of the FERC License Order.

F. Cultural Resources – The Facility is in Compliance with all requirements regarding Cultural Resource protection, mitigation or enhancement included in the FERC license - FACILITY PASSES.

Recreation:

Goal: The facility provides free access to the water and accommodates recreational activities on the public's river.

Standard: A certified facility must be in compliance with terms of its FERC license or exemption related to recreational access, accommodation and facilities. If not FERC-regulated, a facility must be in compliance with similar requirements as recommended by resource agencies. A certified facility must also provide the public access to water without fee or charge.

The recreational opportunities provided by the Offer of Settlement and agreed to by the Parties including FERC, supplements the existing recreational opportunities in the Newton Falls Project area, and provides public access to, and use of, the impoundments, and some adjacent lands associated with the Upper and Lower developments.

Recreational Enhancement Commitments Included in the License

By January 2006, the Licensee had implemented all of the recreation enhancements specified below.

Car-top Boat Launches: The Applicant constructed 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 is provided at this access area. Additionally, an informal car-top boat launch, currently existing about one mile east of the town beach, was improved with gravel and the appropriate signage, including a 10 HP motor limitation sign. There is also roadside parking immediately east of the boat launch.

Canoe Portage: The Applicant provided a canoe portage route commencing at a take-out in the upper impoundment. The take-out is located on the right side of the upper impoundment approximately 300 feet upstream of the dam. The portage utilizes 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 put-in, approximately 150 yards downstream of the lower dam, just downstream of the confluence of the tailrace with the bypassed reach.

Public Access: The Applicant allows public access to all lands within the FERC project boundary associated with each development covered by the 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 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.

Future Recreational Opportunities: The also works with signatories to the Offer of Settlement to examine further reasonable opportunities to develop access to project lands or waters when, and if, the need arises.

Whitewater Opportunities: The Settlement Agreement parties agree that the Applicant is not required by the Settlement, or articles of license, to supply whitewater releases downstream of the Newton Falls Project.

Recreation Monitoring: The Applicant is not required to monitor the use of recreational facilities beyond the requirements of the FERC's Form 80 reporting.

G. Recreation – The Facility is in Compliance with all requirements regarding Recreation protection, mitigation or enhancement included in the FERC license and allow access to the reservoir and downstream reaches without fees or charges - FACILITY PASSES.

Facilities Recommended for Removal:

Goal: To avoid encouraging the retention of facilities that have been considered for removal due to their environmental impacts.

Standard: If a resource agency has recommended removal of a dam associated with the facility, certification is not allowed.

H. Facilities Recommended for Removal – There are no Resource Agency Recommendation for removal of the dam associated with the Facility - FACILITY PASSES.

The Newton Falls Project meets the requirements of all eight of the criteria, and I recommend that the facility be certified by the Low Impact Hydropower Institute as a LIHI Certified facility.

Prepared by Fred Ayer and submitted on February 14, 2008 for LIHI Governing Board action at the February 21, 2008 LIHI Board Meeting.

RECORD OF CONTACTS WITH RESOURCE AGENCY STAFF

Date of Conversation: February 14, 2008
Application Reviewer: Fred Ayer, Executive Director
Person Contacted: Bruce Carpenter
New York Rivers United
Telephone/email: 315-339-2097
Bruce_carpenter@newyorkriversunited.org

Bruce said that he had no problems with Brookfield on this project, but there was an issue that he wanted us to be aware of. During the settlement talks a piece of property near a wetland became available and all parties thought it would be a good to be put in the State's hands. Everything was going smoothly until the state's real property people came to look at the land and turned it down because they did not like the type of survey (contour elevation) that had been done to describe the property. They told the parties that they wanted nothing but a metes and bounds survey. Bruce, or none of the other parties to the settlement felt that this was a Brookfield issue, instead they saw the problem being with the state. The problem is that unless somebody can get the state to accept the property it will go to other hands. Bruce and I talked a bit about it and kicked around some language that we may want to put in the certification decision letter asking Brookfield to see if they could persuade the state to take the property with the existing survey.

Date of Conversation: February 13, 2008
Application Reviewer: Fred Ayer, Executive Director
Person Contacted: Steve Patch
USFWS, Cortland
Telephone/email: 607-753-9334
Stephen_patch@fws.gov

Steve and I had a brief and pleasant conversation about this project and he said basically, when we go through settlement on these projects things generally go very well. We have the 1" rack spacing and the fish passage with a 20 cfs, which is what we wanted---so I guess it's safe to say that Brookfield has gotten better at this as we go forward. They know what we want and that's usually where we start discussion. Occasionally, we will have minor disagreements about timing and implementation, but all the ones with settlement agreements work out well. Steve told me something I hadn't thought about, Brookfield has 72 hydro facilities and all of them are Steve's responsibility, so he knows Brookfield staff well and has worked with them for a long time.

Date of Conversation: February 13, 2008
Application Reviewer: Fred Ayer, Executive Director
Person Contacted: Alice Richardson, Habitat Biologist
NYDEC
Telephone/email: 315-785-2267
apruchar@gw.dec.state.ny.us

Alice said the process went well and the only thing she could think of was there were a couple of post-licensing requirements, water level and flow plan, that had not been completely satisfied. She had seen photos of the monitoring gauges but she and other resource agencies wanted to inspect the visual markers, based on a problem they had at the West Branch St. Regis, the agencies felt that a field visit was necessary. The Upper development gauges are installed and flows have delayed the installation at the Lower Development to this summer. I mentioned to Alice that the Applicant believes they will finalize installation this summer and she conferred. Overall she said that Brookfield had been very good about reporting problems and she wasn't aware of any compliance issues with this project.

Date of Conversation: February 14, 2008
Application Reviewer: Fred Ayer, Executive Director
Person Contacted: John Omohundro
Telephone/email: 315-265-8365
omohunjt@northnet.org

Mr. Omohundro and his wife are members of the Adirondack Mountain Club (AMC) and AMC delegated them to work with Brookfield Power during the settlement talks to establish recreational access to the project land and waters. He and the AMC were pleased with Brookfield and the engineer and Compliance Specialist (Skutnik) that worked with them. John said that Tom Skutnik was a great guy to work with and never short-changed them---he was straightforward and honest in his dealings with John and the AMC.

Date of Conversation: February 14, 2008
Application Reviewer: Fred Ayer, Executive Director
Person Contacted: Andrew Fahlund
American Rivers
Telephone/email: 202-347-7550

While Andrew confirmed that he had been involved with the settlement talks for this project, there wasn't anything particular about project that he could recall. He said that I could rely on Bruce Carpenter's comments as his. In other words he gives Bruce his proxy.
