

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

**Erie Boulevard Hydropower, L.P.  
Project No. 7387**

**PIERCEFIELD PROJECT  
SETTLEMENT AGREEMENT**

August 19, 2003

Prepared by:



**PIERCEFIELD HYDROELECTRIC PROJECT  
SETTLEMENT AGREEMENT**

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**PIERCEFIELD HYDROELECTRIC PROJECT  
SETTLEMENT AGREEMENT**

**1.0 INTRODUCTION**

*The Agreement and The Parties*

This agreement (Settlement Agreement) dated as of August 19, 2003, is made and entered into by and among the following entities who shall, except as otherwise noted, be referred hereafter to as a Party and collectively as "Parties":

- Adirondack Council (AC)
- Adirondack Mountain Club (ADK)
- Adirondack Park Agency (APA)
- American Rivers
- American Whitewater (AW)
- Erie Boulevard Hydropower, L.P. (Erie)
- New York Rivers United (NYRU)
- New York State Conservation Council (NYSCC)
- New York State Department of Environmental Conservation (NYSDEC)
- St. Lawrence County
- St. Regis Mohawk Tribe (SRMT)
- Town of Altamont
- Town of Piercefield
- Trout Unlimited (TU)
- U.S. Department of the Interior (DOI): U.S. Fish and Wildlife Service (USFWS) and National Park Service (NPS)

### 1.1 Term of the Settlement Agreement

This Settlement Agreement 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 subsequent annual licenses.

### 1.2 Agreements to be Incorporated as License Conditions

The agreements in the Settlement Agreement are an integrated and indivisible set of measures intended to address non-power and power values relating to the licensing of the Piercefield Project. The Parties agree that each term of this Settlement Agreement 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 Settlement Agreement, incorporate as license conditions in the new license, each of the commitments that the Licensee has agreed to undertake in Section 3.0 of this Settlement Agreement. "License conditions" are intended to mean numbered articles of the license.

### 1.3 Purpose, Goals, and Geographic Scope

The purpose of this Settlement Agreement is to document the agreements that have been reached as the result of comprehensive discussions among the Parties with regard to the Piercefield Project.

The goal of the Settlement Agreement is to provide for the continued operation of the Piercefield Project 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 in the Raquette River and Piercefield Impoundment.

The geographic scope of the agreements to be incorporated as license conditions includes the stretch of the Raquette River beginning downstream of Setting Pole Dam and ending at the most downstream point of the Piercefield Project's tailrace pool. In

addition, the geographic scope of the agreements to be incorporated as license conditions includes the Piercefield impoundment and adjacent sub-impoundments.

The Parties, having given careful and equal consideration to non-power and power values, provide in the Settlement Agreement 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 license and Water-Quality Certification for the Piercefield Project.

#### 1.4 Project Decommissioning

This Settlement Agreement does not include any provisions relating to decommissioning or dam removal of the Piercefield Project in whole or part. With or without amendment of this Settlement Agreement, any Party may seek such further relief from the FERC regarding such decommissioning as the FERC may order, recognizing that no Party to this Settlement Agreement has, or is advocating decommissioning of any Project facilities at this time, nor does evidence currently exist that would suggest the need to advocate for decommissioning during the term of the license. If and when the subject Project is decommissioned or retired during the term of any 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 Settlement Agreement 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 Settlement Agreement. 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 Agreement. 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 those consistent with the terms of this Settlement Agreement. For issues not addressed herein, for example, the term of the Project license, the parties remain free to advocate their positions in any forum, so long as it is consistent with the Settlement Agreement. Furthermore, this Settlement Agreement shall not be interpreted to restrict any Party's participation or comments in future relicensing of the Piercefield Project.

1.7 Agency Appropriations

Nothing in this Settlement Agreement 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 Settlement Agreement for the fiscal year or to involve the DOI, USFWS, or NPS 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 Settlement Agreement 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 Agreement 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 Settlement Agreement will cite this Agreement 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 Settlement Agreement.

**Baseflow:** The required minimum instantaneous instream flow, measured in cubic feet per second (cfs), to be continuously released from the naturally ponded portion of the Raquette River (the tailrace pond) downstream of the Piercefield Project, including, where applicable, dam leakage where an accurate estimate exists, and bypass flows.

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

**Bypass Reach:** The portion of original riverbed fully or partially dewatered as a result of the diversion of water to the powerhouse.

**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 that is measured in the downward direction from a specific reference point such as permanent crest of dam or crest of flashboards.

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

**License Issuance and Acceptance:** For purposes of this Settlement Agreement, “License Issuance and Acceptance” means that the FERC issues a new license consistent with the terms of the Settlement Agreement relative to the particular enhancement being considered.

**Licensee:** Erie Boulevard Hydropower, L.P. (Erie), or its successor.

**Normal Operation:** The daily operation of the Piercefield Project that may involve utilization of allowable impoundment fluctuations as needed to produce energy.

**Raquette River Projects:** The collective reference to the Carry Falls Project, Upper Raquette River Hydroelectric Project, Middle Raquette River Hydroelectric Project, and Lower Raquette River Hydroelectric Project (FERC No’s. 2060, 2084, 2320, and 2330, respectively).

## 2.0 GENERAL AGREEMENTS OF THE PARTIES

### 2.1 Enforceability and Withdrawal Rights

The Parties agree that it is their intent, and this Settlement Agreement is based upon, and in consideration of their expectation that Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, and 3.7 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 are enforceable by FERC.

In the event that the FERC should, contrary to the integrated and indivisible nature of this Settlement Agreement described herein in Section 1.2, issue a new license that materially and significantly modifies any of the commitments identified in Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, and 3.7 which the Licensee has agreed to undertake as part of this Settlement Agreement 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 2.2, and in the event any Party thereafter determines that its interests will be materially and adversely affected by the change or the 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 Settlement Agreement and thereafter the Settlement Agreement 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.

2.2 Rehearings and Judicial Review

The Parties agree that none of them will file or support a request for rehearing of any new license unless the license contains conditions that are materially inconsistent with the terms of this Settlement Agreement, which omits as license conditions terms of the Settlement Agreement that the Parties have agreed should be included as license conditions, or if the FERC determines that it will not enforce any of the provisions of the Settlement Agreement that the Parties have agreed should become enforceable conditions of the new license, as expressly identified in Section 2.1. 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 all 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. 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 support such a petition to the extent reasonably possible.

2.3 Water-Quality Certification – Withdrawal Rights

The Parties agree that they will support the issuance by the NYSDEC of a Section 401 Water-Quality Certification that is consistent with the provisions of this Settlement Agreement for the Piercefield Project. If the NYSDEC should issue a Section 401 certification for the Project that is materially inconsistent with the provisions of this Settlement Agreement, any Party can withdraw from this Settlement Agreement by providing written notice of its intention to do so to the other Parties within 60 days from the date of the 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 the Section 401 certification that is issued.

#### 2.4 Reopeners

The Parties agree that, except as provided herein, this Settlement Agreement 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 the DOI relating to the Secretary's fishway prescription authority under § 18 of the FPA. No such petition, including the exercise of § 18 authority, may be filed that would, if granted, be materially inconsistent with this Settlement Agreement, or cause other portions of the Settlement Agreement 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 Settlement Agreement that 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. In no event, however, shall any Party, except the Secretary of the DOI in the exercise of her reserved authority under § 18 of the FPA, file such a petition with FERC prior to the tenth anniversary date of the new license unless it has first secured the unanimous consent of all the Parties that are federal and state resource agencies; the Licensee and a majority of the other Parties to this Settlement Agreement. Parties that refuse to support such a reopener petition shall explain their reasons in writing at the time they communicate their decision on the proposed reopener petition.

#### 2.5 License Amendments

The Parties agree that, except as provided herein, nothing in this Settlement Agreement 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 that would be materially inconsistent with the provisions of this Settlement Agreement if it has substantial evidence that a change in circumstances has occurred that 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. In no event, however, shall the Licensee seek such a license amendment prior to the tenth anniversary date of the new license unless it has first secured the consent of all the Parties that are federal or state resource agencies and the consent of a majority of the other Parties to the Settlement Agreement. Parties that refuse to support such a license amendment shall explain their reasons in writing at the time they communicate their decision on the proposed license amendment. For other license amendments that just relate to the license terms set forth in this Settlement Agreement, 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 that relates to any of the terms and conditions of this Settlement Agreement, the Licensee shall document its consultation, summarize the positions and recommendations of the Parties, and provide its responses 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.

## 2.6 Settlement Agreement Amendments

The Parties agree that, except as provided herein, nothing in this Settlement Agreement is intended to limit or restrict the ability of any Party to seek an amendment to this Settlement Agreement 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 Settlement Agreement 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. 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.

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

Prior to the issuance of the new license pursuant to this Settlement Agreement 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 Agreement and the Party who wishes to make the filing provides the other Parties at least 30 days notice of such a filing.

#### 2.8 Compliance with the National Historic Preservation Act

The Licensee will develop a Historic Properties Management Plan (HPMP) in consultation with the St. Regis Mohawk Tribe, the Oneida Indian Nation, and the New York State Office of Parks, Recreation, and Historic Preservation.

#### 2.9 Compliance with the Endangered Species Act

Consultation with the NYSDEC and the USFWS has established that, except for some transient individuals, there are no federally- or state-listed threatened or endangered species in the area of the Piercefield Project at this time.

**3.0 MEASURES THAT THE LICENSEE WILL UNDERTAKE WITH RESPECT TO LICENSE CONDITIONS**

**3.1 Daily Impoundment Fluctuation as Part of Normal Operations**

Consistent with the project’s current license, and upon license issuance and acceptance, the Licensee shall limit daily impoundment fluctuations as part of normal operation within the Piercefield impoundment as specified in Table 3-1.

**Table 3-1  
Piercefield Hydroelectric Project  
Normal Impoundment Fluctuation**

<b>Permanent Crest of Dam (USGS)</b>	<b>Flashboards</b>	<b>Normal Impoundment Fluctuation</b>
1,540.0	2.0 foot high flashboards	1.0 foot measured in downward direction from top of flashboards or crest of spillway.

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 crest of dam (1,540.0 USGS) or top of flashboards (1,542.0 USGS). 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 such elevations are not considered as a utilization of the normal impoundment fluctuation.

Impoundment fluctuation limitations may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security, and for short periods upon prior mutual agreement between the Licensee and NYSDEC. If the limitations are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

### 3.1.1 Justification

Based on field observations resulting from the Piercefield *Impoundment Fluctuation Study*, the continuation of a one-foot tolerance for daily fluctuation limitation is reasonable. Impacts to the wetlands and littoral habitat from one-foot daily fluctuations are minimal. In addition, the one-foot fluctuation is used to maintain the downstream baseflow and is not part of a pulsing operation where the impoundment continually fluctuates up and down one foot.

### 3.2 Seasonal Impoundment Fluctuation

Within 24 months of license issuance and acceptance, the Licensee will replace the existing seasonal 2-foot-high flashboards with 2-foot-high flashboards intended to remain in place on a year-round basis. In addition, within 24 months of license issuance and acceptance, the Licensee will retrofit the project's stanchion spillway section with one or more readily operable gates in order to reduce the likelihood of flashboard failure and to maintain adequate spill capacity. The year round flashboards will be designed to fail when overtopping in excess of 2.0 feet occurs. The scheduling of this work will be performed in consultation with the NYSDEC, USFWS, and APA.

Seasonal impoundment fluctuation limitations, or the provision of the year round flashboards, may be curtailed or suspended if required or caused by, high water events or operating emergencies beyond the control of the Licensee, including security, and for short periods upon prior mutual agreement between the Licensee and NYSDEC. If the limitations are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

### 3.2.1 Justification

Between September 2001 and October 2002, Parties representing NYSDEC, USFWS, APA, NYRU, and the Licensee participated in a series of study scoping meetings, conference calls, data review meetings, and field visits to evaluate seasonal and normal fluctuation of the Project's impoundment. The Parties' efforts resulted in the development of an *Impoundment Fluctuation Study* and *Impoundment Fluctuation Alternatives Assessment* that evaluated the potential impacts to non-power and power resources associated with impoundment fluctuation.

Through the fluctuation study and alternatives assessment, the Parties concluded that elimination of the seasonal fluctuation (resulting from the current operational practice of installing and removing the Project's 2-foot flashboards every spring and fall, respectively) could reduce observed and potential impacts to non-power resources (e.g., wetlands, invertebrate and reptile habitat, and recreational and aesthetic resources) associated with the Piercefield impoundment. The Parties observed the impoundment following flashboard removal in October and November 2001 and during spring runoff in April 2002. Based on these observations and in conjunction with the Alternatives Assessment, the Parties concluded that year round flashboards, with a stanchion spillway retrofit to reduce the likelihood of flashboard failure, would address the Parties' concerns that initiated the impoundment fluctuation study.

Parties agreed that replacement of the seasonal 2-foot-high flashboards with 2-foot-high year-round flashboards is consistent with the existing licensed impoundment elevations, and while the year-round flashboards would be designed to fail under conditions expected to occur once every 5 to 7 years, the elimination of the annual 2-foot impoundment fluctuation associated with the installation and removal of the seasonal flashboards is considered a significant enhancement. Parties acknowledged that the year-round flashboards should fail under certain conditions, and that such failure is unavoidable given the precipitation, runoff, ice, and debris conditions that can occur.

Parties further acknowledged that periodic failure of the year-round flashboard system would mimic natural conditions and should not be considered an adverse impact.

### 3.3 Fish Movement and Protection

Within 24 months of license issuance and acceptance, the Licensee shall construct and place into operation a 20 cfs downstream fish movement release from the Project's retrofitted stanchion spillway (Section 3.2). Upon license issuance and acceptance, the Licensee will no longer be required to maintain an 8 cfs bypass flow.

The Licensee will replace the project's existing trashracks with trashracks with 1-inch clear spacing by December 31, 2012, or when the existing trashracks are replaced, whichever is sooner.

The Licensee shall not be required to provide upstream fish passage facilities at this time.

The Licensee shall not be required to: 1) test the effectiveness of any, or all, components of the fish movement or protection measures and/or structures, 2) make qualitative or quantitative determinations of fish entrainment and/or mortality, and/or 3) provide compensation for any fish entrainment or mortality.

The Licensee shall not be required to increase the level of protection or movement as agreed to by this Settlement Agreement for the term of the license, unless prescribed by the U.S. Department of the Interior under Section 18 of the FPA (see Section 3.7).

The requirements of this commitment may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security, and for limited periods upon prior mutual agreement between the Licensee, USFWS, and NYSDEC. If the requirements of this commitment are so modified, the Licensee shall

notify the FERC as soon as possible, but no later than (10) business days after each such incident.

### 3.3.1 Justification

#### Downstream Fish Movement

Consistent with NYSDEC and USFWS fisheries management goals for the Raquette River, Parties concluded that a 20 cfs downstream fish movement flow from the Piercefield Project would benefit fish species in the vicinity of the project.

On September 5, 2002, Party representatives, including representatives of the NYSDEC and USFWS, evaluated the potential downstream fish movement opportunities that could be created at the Piercefield Project. In particular, the Party representatives performed various releases from the Project's spillway stanchions. Based on these evaluations, the location of the spillway stanchions relative to powerhouse intake, the terrain located immediately downstream of the spillway and other potential locations for downstream fish movement structures, the Parties concluded that providing a 20 cfs release from the project's spillway stanchions would provide the best opportunity for downstream fish movement.

Based on the consultation meetings and field visits, the Parties concluded that eliminating the 8 cfs bypass flow would not have an adverse impact on the aquatic resources associated with the project's bypass reach. This conclusion was based upon the vertical nature, rocky substrate, and limited area of the reach. In particular, the vertical and rocky nature of the bypass reach results in rapidly moving water over the upper segment of the reach, thus reducing the potential for area wildlife (e.g., amphibians and macrovertebrates) to benefit from the bypass flow. Furthermore, given the location of the bypass reach relative to the Project's spillway and tailrace, the downstream end of the bypass reach (the area of the bypass reach that provides the greatest potential for aquatic habitat) will remain wetted due to ponding downstream of the Project's powerhouse.

### Fish Protection

Consistent with other projects located along the Raquette River included in the Raquette River Offer of Settlement, the Parties concluded that fish protection, in the form of trashracks with 1.0-inch clear spacing, should be installed at the project. Accordingly, the Licensee agrees to install trashracks with 1.0-inch clear spacing at the Piercefield Project by December 31, 2012, or when existing trashracks are replaced, whichever is sooner.

### 3.4 Baseflow

The Licensee shall maintain a baseflow of 150 cfs (or inflow to the Piercefield impoundment, whichever is less) from the ponded portion of the Raquette River (the tailrace pond) downstream of the Piercefield Project.

The requirements of this commitment may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security, and for limited periods upon prior mutual agreement between the Licensee, USFWS, and NYSDEC. If the requirements of this commitment are so modified, the Licensee shall notify the FERC as soon as possible, but no later than (10) business days after each such incident.

#### 3.4.1 Justification

Party representatives, including members of the NYSDEC, USFWS, and APA performed an observation of the project baseflow at 150 cfs. In particular, the Party representatives observed the riffle habitat downstream of the Piercefield powerhouse. Based on previous field visits to the Piercefield Project area and familiarity with the Raquette River, the Parties concluded that this riffle habitat was representative of similar habitat areas downstream of the project. Based on the field observations, the Parties concluded that 150 cfs provided sufficient flow to support such habitat areas.

3.5 Recreation and Recreational Releases

Within 24 months of license issuance and acceptance, the Licensee shall modify the flow notification system established for the Middle Raquette River Project (FERC No. 2320) to include discharge information for the Piercefield Project.

Within 12 months of license issuance and acceptance, the Licensee shall replace flagging along the Project canoe portage with more permanent signage and/or blazes. In addition, the Licensee shall continue to maintain the canoe portage for the term of a new FERC license for the Piercefield Hydroelectric Project.

Beginning the first June following license issuance and acceptance, the Licensee shall provide an annual scheduled recreational release on the last Saturday of June. The release, which will be measured by the USGS gauge located immediately downstream of the Project tailrace, shall consist of a 750 cfs continuous release (either from the Piercefield turbine units or spillway discharge facilities), lasting five hours. If inflow to the Project falls below 350 cfs during the 24 hours prior to the day of the scheduled release, the release will be cancelled and not rescheduled.

Following modification of the flow notification system, the Licensee shall post the release on the flow notification system. On the day of the release, the Licensee shall provide a sign-in register at the Town of Piercefield Beach for users of the release. The Licensee will be responsible for collecting the contents of the register. If the release is cancelled, the Licensee will post the cancellation on the flow notification system. Seventy-two hours prior to the scheduled release, the Licensee will post information on the flow notification system regarding the status of the scheduled release (e.g., given the current flow, there is a possibility that the release will be cancelled).

To the extent allowed by law, the Licensee shall not be held liable for injuries or death incurred by any persons during a scheduled release or spill event. The Licensee shall not be responsible for conducting rescue efforts.

### 3.5.1 Justification

#### Flow Notification System

Based upon the canoeing and whitewater opportunities provided by the Raquette River downstream of the Piercefield Project, the Parties concluded that the Licensee should provide a means to inform recreational users of the flows downstream of the Piercefield Project. Given that the Licensee is developing a flow notification system for the downstream Middle Raquette River Project, the Parties concluded that recreational users would benefit by providing the Piercefield Project flow information through the same system as the downstream information. One option for providing the Piercefield Project flow information would be to link the existing *Real Time USGS Raquette River Gauge for Piercefield, NY* web site to the Middle Raquette River flow notification system.

#### Canoe Portage

Based on reviews of the Project canoe portage, the Parties concluded that the Licensee should replace flagging located along the portage path with more permanent signage and/or blazes. In addition, the Parties concluded that the Licensee should be responsible for continued maintenance of the Project canoe portage.

#### Recreational Releases

Based on reviews of the Project relative to downstream whitewater resources, the Parties, including representatives of AW, NYRU, and NYSDEC concluded that regularly scheduled releases to accommodate whitewater recreation would not be included as part of this Settlement Agreement. Factors influencing this decision include limited available storage in conjunction with the downstream flow attenuation that results from the presence of wetlands and pools.

However, the Parties agreed to a proposal by the ADK for the Licensee to provide an annual recreational release in order to facilitate canoeing the length of the Raquette

River between the Piercefield Project and the Carry Falls Reservoir (approximately 17 miles). The Parties agreed that an annual release of 750 cfs for 5 hours on the last Saturday of June would provide the conditions desirable for a canoe trip from the Piercefield Project to the Carry Falls Reservoir.

The Parties agreed that the recreational release should not take place if such a release would adversely impact habitat associated with the Piercefield Impoundment (i.e., result in a drawdown of the impoundment with an extended recharge period) or adversely impact the downstream Raymondville Baseflow as defined by the Raquette River Settlement Offer, dated March 13, 1998. Based on this agreement and flow evaluations performed by the Parties, the Parties concluded that **if Project inflow falls below 350 cfs during the 24 hours prior to the scheduled release**, then the release would be cancelled. The parties also concluded that if the scheduled release were cancelled due to low inflow, the release would not be rescheduled.

Canoeists can continue to use the river's natural flow to canoe the length of the River between the Piercefield Project and the Carry Falls Reservoir.

#### Additional Recreational Facilities

The Parties agreed that no additional recreational facilities are required as part of this Settlement Agreement. This conclusion is based on a field review of the recreational facilities that presently exist within the vicinity of the project area. Such facilities include: 1) a boat ramp; 2) a fishing platform with ADA access; 3) a canoe takeout, put-in, and canoe portage trail with signage and trail markers; 4) access for downstream whitewater resources; 5) parking areas adjacent to the boat ramp, fishing platform, canoe portage, and whitewater access; 6) safety warning signs and seasonal boat barrier and 7) multiple shoreline fishing areas throughout the impoundment and riverine segments of the project area.

### 3.6 Flow and Water Level Monitoring

The Licensee shall develop a stream-flow and water-level monitoring plan in consultation with the NYSDEC and USFWS within six months of license issuance and acceptance. The monitoring plan shall include all gages and/or equipment to:

- Determine headpond elevations as needed, and
- Provide an appropriate means of independent verification of water levels by the NYSDEC, USFWS, and APA.

The baseflow will be monitored using the USGS gauging station (USGS gage 04266500) located on the Raquette River immediately downstream of the ponded area.

All gages and ancillary equipment required by the monitoring, including headpond gages, shall be made operational and fully calibrated within fifteen months of license issuance and acceptance.

The monitoring plan shall contain provisions for the installation of binary staff gages at appropriate locations to permit independent verification of headpond water levels. Binary staff gages will be visible to the general public. Access to staff gages shall be provided to the NYSDEC, USFWS, and/or their authorized representatives.

The Licensee shall keep accurate and sufficient records of the impoundment elevations and all project 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 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 baseflow from the Piercefield Project. The Licensee will consult with the NYSDEC to develop a plan for reporting these types of incidents. The reporting plan shall be finalized within twelve months of license issuance and acceptance.

3.7 Fish Passage and Section 18

The new FERC license for the project shall include the standard license article in which the Secretary of the Interior exercises § 18 authority, by reserving the Secretary's authority to prescribe the construction, operation and maintenance of such fishways as deemed necessary.

#### 4.0 NON-PROJECT MEASURES

##### 4.1 Agreement with the Town of Piercefield

Within 12 months of license issuance and acceptance, the Licensee agrees to provide a one-time fund of \$10,000 to the Town of Piercefield. At the sole discretion of the Town, this fund may be used for improvements to facilities such as the Town of Piercefield Beach or Gull Pond Road.

##### 4.2 Piercefield Project Advisory Council Subcommittee

Within 12 months of license issuance and acceptance, signatories to this Settlement Agreement shall form, and designate a representative to serve on, a Piercefield Project Subcommittee (PPS). The PPS will be formed as a subcommittee to the Raquette River Advisory Council (RRAC) as designated in the *Raquette River Projects FERC Project Nos. 2060, 2084, 2320 and 2330 Settlement Offer, Final, March 13, 1998*. Any Party's membership in the PPS is conditioned on being a signatory to this Settlement or through future approval of the existing members of the PPS. The PPS will exist and function in accordance with the By-Laws and Rules of Procedure to be adopted by the RRAC. In the event the RRAC were to cease to exist, the PPS would function as a stand-alone committee and would receive the funding described below. The NYSDEC will chair the PPS until the PPS identifies a chairperson.

##### 4.3 Enhancement Fund

Beginning 12 months following license issuance and acceptance, the Licensee shall annually contribute to the Piercefield Fund an amount of \$500.00. Geographically, the Piercefield Fund may be used within the Raquette River Basin between River Miles 10 and 93, (where 93 is one mile upstream of the Piercefield Project Boundary) as measured from the confluence of the Raquette River with the St. Lawrence River and within one (1) mile of the riverbank. The Piercefield Fund may be used for projects, studies, or services, designated by majority vote of the PPS, for any of the following purposes: ecosystem restoration and protection, natural resource stewardship, public

education, applied research or development necessary to accomplish these projects and provide these services, new recreation resources, and additional public access to outdoor recreational resources not currently agreed to by the Parties.

Priority for Piercefield Fund disbursements will be accorded to proposals from the Towns of Piercefield and Altamont. However, upon mutual agreement between members of the RRAC and PPS, the balance of the Raquette River Fund (as described in the *Raquette River Projects FERC Project Nos. 2060, 2084, 2320 and 2330 Settlement Offer, Final, March 13, 1998*) and the Piercefield Fund may be combined in part, or in whole.

The Piercefield Fund is not intended for any of the Parties of this Offer of Settlement to carry out any obligations under the new FERC license or any amendment thereto. Furthermore, the Piercefield Fund is not intended for any Party to discharge any legal or statutory obligations. The Piercefield Fund will be administratively managed by the PPS and distributed according to the criteria described above and the majority vote of the PPS (or in conjunction with the RRAC depending upon mutual agreements that may be reached between the PPS and RRAC).

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** Adirondack Council

**By:** \_\_\_\_\_  
Mr. Bernard Melewski

**Title:**

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** Adirondack Mountain Club

**By:** \_\_\_\_\_  
Ms. Betty Lou Bailey

**Title:** Chairman, Canoe Route Subcommittee,  
Conservation Committee

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** Adirondack Park Agency

**By:** \_\_\_\_\_  
Mr. Daniel T. Fitts

**Title:** Executive Director

**Date:** \_\_\_\_\_

**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** American Rivers

**By:** \_\_\_\_\_  
Mr. Andrew Fahlund

**Title:** Director of Hydropower Programs

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** American Whitewater

**By:** \_\_\_\_\_  
Mr. Kevin Colburn

**Title:**

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** Erie Boulevard Hydropower, L.P.

**By:** \_\_\_\_\_  
Mr. Dave Youlen

**Title:** General Manager

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** New York Rivers United

**By:** \_\_\_\_\_  
Mr. Bruce R. Carpenter

**Title:** Executive Director

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** New York State Conservation Council

**By:** \_\_\_\_\_  
Mr. Howard O. Cushing, Jr.

**Title:** President

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** New York State Department of Environmental  
Conservation

**By:** \_\_\_\_\_  
Ms. Lynette Stark

**Title:** Assistant Commissioner

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** St. Lawrence County

**By:** \_\_\_\_\_  
Mr. Alexander A. MacKinnon

**Title:** Chair St. Lawrence County Board of  
Legislatures

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** St. Regis Mohawk Tribe

**By:** \_\_\_\_\_  
Chief Jim Ransom

**Title:**

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** Town of Altamont

**By:** \_\_\_\_\_  
Mr. Gregory LaFrance

**Title:** Deputy Town Supervisor

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** Town of Piercefield

**By:** \_\_\_\_\_  
Mr. Kevin Buckley

**Title:** Town Supervisor

**Date:** \_\_\_\_\_

*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** Trout Unlimited

**By:**

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Mr. Thomas Matias

**Title:**

**Date:**

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*August 19, 2003*

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**SETTLEMENT AGREEMENT  
PIERCEFIELD PROJECT**

**Organization:** U.S. Department of the Interior,  
National Park Service

**By:** \_\_\_\_\_  
Mr. Jamie Fosburgh

**Title:** Program Manager, National Rivers North

**Date:** \_\_\_\_\_