



New York West Operations  
Erie Boulevard Hydropower, LP  
33 West 1<sup>st</sup> Street South  
Fulton, NY 13069

Tel. (315) 593-3118  
Fax (315) 598-4831  
[www.brookfieldpower.com](http://www.brookfieldpower.com)

*FILED ELECTRONICALLY*

February 18, 2011

Honorable Kimberly D. Bose  
Secretary  
**FEDERAL ENERGY REGULATORY COMMISSION**  
888 First Street, NE  
Washington, DC 20426

**SUBJECT: OSWEGATCHIE RIVER HYDROELECTRIC PROJECT (FERC No. 2713)  
OFFER OF SETTLEMENT**

Dear Secretary Bose:

Pursuant to 18 CFR § 385.602, Erie Boulevard Hydropower, L.P. (Erie), a wholly owned subsidiary of Brookfield Renewable Power, Inc., hereby submits a copy of the “Oswegatchie River Project Offer of Settlement.” This Offer of Settlement was developed in support of the relicensing of the Oswegatchie River Hydroelectric Project (FERC Project No. 2713) (Project).

This Offer of Settlement serves as the final agreement that has been reached as the result of comprehensive discussions among the Settlement Parties with regard to the Commission’s issuance of a new license for the Project.

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

The Settlement Parties, having given careful and equal consideration to non-power and power values, provide in this Offer of Settlement the terms and conditions for addressing the operational, fisheries, wildlife, water quality, recreational and historical aspects analyzed by the Settlement Parties as they are applicable to the issuance of a new license and Section 401 Water Quality Certificate for the Project.

The Offer of Settlement has been signed by the U.S. Fish and Wildlife Service, New York State Department of Environmental Conservation, National Park Service, New York State Council of Trout Unlimited, Adirondack Park Agency, Adirondack Mountain Club, St. Lawrence County, Clifton-Fine Economic Development Corp, 5 Ponds Subcommittee, and Erie.

An initial Draft Offer of Settlement was developed by, and circulated within the Settlement Parties on October 14, 2010 with subsequent drafts on November 19, 2010, December 9, 2010, December 22, 2010 and January 5, 2011. The attached resultant final Offer of Settlement is dated January 21, 2011.

February 18, 2011  
Page 2 of 2

## **EXPLANATORY STATEMENT**

This Offer of Settlement sets forth the comprehensive terms and conditions on which the signatories have agreed should be included in the new license for the Oswegatchie River Hydroelectric Project. In the course of the consultation process, the stakeholders were solicited for their collective environmental resource concerns and stakeholder interests and it was agreed that a comprehensive Offer of Settlement was the appropriate means of commemorating the agreed upon license terms and conditions based on the collaboratively developed studies. Accordingly, the Offer of Settlement included in this submittal achieves the goal pursued by Erie and the stakeholders and by virtue of the comprehensive nature of this Offer of Settlement and the number of agencies and other stakeholders who have signed this agreement, it is in the public interest to submit this Offer of Settlement as the basis of Erie's license application which was submitted to the Commission on December 30, 2010.

If you have any questions regarding this submittal, please contact the undersigned at (315) 598-6131.

Very truly yours,

A handwritten signature in black ink, appearing to read "D.G. Daoust", with a long horizontal flourish extending to the right.

Daniel Daoust  
New York West Operations

Enclosure

cc: Attached Distribution List

## Oswegatchie River Project (FERC No. 2713) Distribution List

Tom Nichols  
Black Lake Invasive Weeds Committee  
5201 CR6  
Ogdensburg, NY 13669

Bill Dashnaw  
Black Lake Invasive Weeds Committee  
25 William Manor Dr.  
Waddington, NY 13694

Leonard Hendrix  
Herkimer County  
109 Mary Street, Suite 1310  
County Office Building  
Herkimer, NY 13350-1998

Jefferson County  
175 Arsenal Street  
Watertown, NY 13601

Thomas Sweet  
Lewis County Highway Department  
7660 State Street  
Lowville, NY 13367

Jon Montan  
Saint Lawrence County  
48 Court Street  
Canton, NY 13617

Kathleen Bouchard  
City of Ogdensburg  
330 Ford Street  
Ogdensburg, NY 13669

Sally Noble  
Village of Canton  
Municipal Building  
60 Main Street  
Canton, NY 13617

Margaret J. Stacy  
Town of Canton  
Municipal Building  
60 Main Street  
Canton, NY 13617

Jennifer Link  
Village of Gouverneur  
33 Clinton Street  
Gouverneur, NY 13642

Joan M. Hall  
Town of Gouverneur  
1227 US Highway 11  
Gouverneur, NY 13642

Hope M. Dolan  
Town of Fine  
PO Box 238  
Star Lake, NY 13690

Bethany Rathman  
Town of Clifton  
PO Box 684  
Cranberry Lake, NY 12927

Patricia Davis  
Town of Edwards  
PO Box 126  
Edwards, NY 13635

Janet M. Wheeler  
Town of Oswegatchie  
51 State Street  
Heuvelton, NY 13654

Joyce Bickel  
Village of Heuvelton  
51 State Street  
Heuvelton, NY 13654

Arnold Printup  
Saint Regis Mohawk Tribe  
Tribal Historic Preservation Office  
412 State Route 37  
Akwesasne, NY 13655

Jesse Bergevin  
Oneida Indian Nation  
Legal Department  
PO Box 662  
Oneida, NY 13421-0662

Onondaga Nation  
PO Box 319B  
Nedrow, NY 13120

Cayuga Nation  
PO Box 11  
Versailles, NY 14168-0011

Chief Roger Hill  
Tonawanda Seneca Nation  
7050 Meadsville Road  
via Basom, NY 14013

Chief Leo R. Henry  
Tuscarora Nation  
2006 Mount Hope Road  
Lewiston, NY 14092

Dawn C. Howard  
St. Lawrence Cnty. Soil & Water Conservation Council  
1942 Old Dekalb Road  
Canton, NY 13617

Sherman Craig  
248 Ranger School Road  
Wanakena, NY 13695

Roger Backus  
Cranberry Lake Reservoir  
PO Box 673  
Cranberry Lake, NY 12927

Steven Murphy  
Erie Boulevard Hydropower  
33 West 1st Street, South  
Fulton, NY 13069

Jon Elmer  
Erie Boulevard Hydropower  
800 Starbuck Ave., Suite 802  
Watertown, NY 13601

Daniel Parker  
Erie Boulevard Hydropower  
184 Elm Street  
Potsdam, NY 13676

Daniel Daoust  
Erie Boulevard Hydropower  
33 West 1st Street, South  
Fulton, NY 13069

Julie Smith-Galvin  
Brookfield Renewable Power  
200 Donald Lynch Boulevard, Suite 300  
Marlborough, MA 01752

Neil Woodworth  
Adirondack Mountain Club  
301 Hamilton Street  
Albany, NY 12210-1707

Bob Wakefield  
Adirondack Mountain Club  
210 Kearney Road  
Gouverneur, NY 13642

John Omohundro  
Adirondack Mountain Club  
PO Box 299  
Hannawa Falls, NY 13647

American Rivers, Inc.  
Hydropower  
1101 14th Street, NW, Suite 1400  
Washington, D.C. 20005-5637

Kevin Colburn  
American Whitewater  
1035 Van Buren Street  
Missoula, MT 59802

Richard Roos-Collins  
Natural Heritage Institute  
100 Pine St., Suite 1550  
San Francisco, CA 94111

Harold Palmer  
NYS Conservation Council, Inc.  
8 East Main Street  
Ilion, NY 13357-1899

Bob Flavin  
NYS Conservation Council, Inc.  
116 Ogden Street  
Ogdensburg, NY 13669

Bruce R. Carpenter  
New York Rivers United  
PO Box 1460  
Rome, NY 13442-1460

Bill Wellman  
Trout Unlimited  
7 Helen Street  
Plattsburg, NY 12901

Ron Urban  
NYS Council: Trout Unlimited  
146 Bayerd Street  
Port Ewen, NY 12466

Jim Snyder  
St. Lawrence Cnty. Fish Advisory Board  
3062C Route 6  
Hammond, NY 13646

Chester McGee  
Bureau of Indian Affairs  
Eastern Regional Office  
545 Marriott Drive, Suite 700  
Nashville, TN 37214

Bob Dach  
US Bureau of Indian Affairs  
Natural Resources  
911 NE 11th Avenue  
Portland, OR 97232

William L. Owens  
US House of Representatives  
NY 23rd  
2366 Rayburn House Office Building  
Washington, D.C. 20515-3223

Kirsten Gillibrand  
United States Senate  
New York State Senate  
478 Russell Senate Office Building  
Washington, D.C. 20510

Charles E. Schumer  
United States Senate  
New York State Senate  
313 Hart Senate Building  
Washington, D.C. 20510

Steve Metivier  
US Army Corps. of Engineers  
Buffalo District  
1776 Niagara Street  
Buffalo, NY 14207

United States Coast Guard  
MSO Buffalo  
1 Fuhrmann Boulevard  
Buffalo, NY 14203-3105

Grace Musumeci  
Region 2 Environmental Protection Agency  
290 Broadway, 25th Floor  
New York, NY 10007

Stephen Patch  
US Fish & Wildlife Service  
New York Field Office  
3817 Luker Road  
Cortland, NY 13045

Curt Orvis  
US Fish & Wildlife Service  
300 Westgate Center Drive  
Hadley, MA 01035

David Stillwell  
US Fish & Wildlife Service  
New York Field Office  
3817 Luker Road  
Cortland, NY 13045

Duncan Hay  
US National Park Service  
Northeast Region - US Custon House  
15 State Street  
Boston, MA 02109

Kevin Mendik  
US National Park Service  
Boston Support Office  
15 State Street  
Boston, MA 02109-3502

Kimberly D. Bose  
FERC  
888 First Street NE  
Washington, D.C. 20426

John Baummer  
FERC  
Division of Hydropower Licensing  
888 First Street NE  
Washington, D.C. 20426

Peter R. Valeri  
FERC  
New York Regional Office  
19 West 34th Street, Suite 400  
New York, NY 10001

Al Caccese  
National Audubon Society  
200 Trillium Lane  
Albany, NY 12203

Sean McDermott  
NOAA Fisheries  
Northeast Region/ Regional Office  
One Blackburn Drive  
Gloucester, MA 01930

Diane Rusanowsky  
NOAA Fisheries  
Office of Habitat Conservation  
212 Rogers Ave.  
Milford, CT 06460-6435

Advisory Council on Historic Preservation  
Eastern Office of Project Review  
1100 Pennsylvania Ave, NW, Suite 809  
Washington, D.C. 20004

Margaret Philips  
U.S. Geological Survey  
425 Jordan Road  
Troy, NY 12180

Edward Snizek  
NYS Adirondack Park Agency  
PO Box 99, 1133 NYS Route 86  
Ray Brook, NY 12977

Alice Richardson  
NYS DEC  
Dulles State Office Building  
317 Washington Street  
Watertown, NY 13601

Lawrence Ambeau  
NYS DEC  
Region 6 Headquarters  
Dulles State Office Building  
317 Washington Street  
Watertown, NY 13601

Doug Carlson  
NYS DEC  
Dulles State Office Building  
317 Washington Street  
Watertown, NY 13601

David Sampson  
NYS DEC  
Office of General Council  
625 Broadway  
Albany, NY 12233-1500

Nick Conrad  
NYS DEC  
Natural Heritage Program  
625 Broadway  
Albany, NY 12233-4757

Frank Flack  
NYS DEC  
Dulles State Office Building  
317 Washington Street  
Watertown, NY 13601

Dick McDonald  
NYS DEC  
Dulles State Office Building  
317 Washington Street  
Watertown, NY 13601

James M. Foster  
NYS Energy Research & Development Authority  
17 Columbia Circle  
Albany, NY 12203

Carol Ash  
NYS Parks, Rec. & Historic Preservation  
Empire State Plaza  
Agency Building 1  
Albany, NY 12238

Patricia L. Acampora  
NYS Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350

John Smolinsky  
NYS Public Service Commission  
Environmental Certification and Operations  
3 Empire State Plaza  
Albany, NY 12223

Ruth Pierpont  
State Historic Preservation Office  
Peebles Island Resource Center  
PO Box 189  
Waterford, NY 12188-0189

Lynn Garofalini  
State Historic Preservation Office  
National Register & Survey Unit  
Peebles Island Resource Center  
PO Box 189  
Waterford, NY 12188-0189

Matthew P. Maraglio  
Department of State  
Coastal, Local Govt. & Community Sustainability  
One Commerce Plaza  
99 Washington Ave.  
Albany, NY 12231-0001

George Stafford  
Department of State  
Division of Coastal Resources  
41 State Street  
Albany, NY 12231

Dede Scozzafava  
New York State Assembly  
122nd Assembly District  
93 East Main Street  
Gouverneur, NY 13642

Addie J. Russell  
New York State Assembly  
118th Assembly District  
70 Main Street, Suite One  
Canton, NY 13617

State of New York  
Cultural Education Center  
Geological Survey  
Albany, NY 12230-0001

State of New York  
Marine Sciences Research Center  
State University of New York  
Stony Brook, NY 11794-0001

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

**Erie Boulevard Hydropower, L.P.**  
**Project No. 2713**

**OSWEGATCHIE RIVER PROJECT**  
**OFFER OF SETTLEMENT**

January 21, 2011

## OSWEGATCHIE RIVER PROJECT OFFER OF SETTLEMENT

### TABLE OF CONTENTS

<b>1.0</b>	<b>INTRODUCTION .....</b>	<b>1</b>
1.1	Term of the Offer of Settlement.....	1
1.2	Agreements to be Incorporated as License Conditions.....	1
1.3	Purpose and Goals.....	2
1.4	Project Decommissioning .....	2
1.5	Successors and Assigns.....	3
1.6	Parties to Support Regulatory Approvals .....	3
1.7	Agency Appropriations .....	3
1.8	Establishes No Precedents .....	4
1.9	Conventions and Definitions.....	4
1.10	Offer of Settlement .....	5
 <b>2.0</b>	 <b>GENERAL AGREEMENTS OF THE PARTIES .....</b>	 <b>6</b>
2.1	License Term .....	6
2.2	Implementation Schedule.....	6
2.3	Enforceability and Withdrawal Rights.....	8
2.4	Rehearings and Judicial Review .....	8
2.5	Water-Quality Certification - Withdrawal Rights.....	9
2.6	Reopeners.....	9
2.7	License Amendments.....	10
2.8	Offer of Settlement Amendments .....	11
2.9	Filings Prior to Issuance of New License .....	11
2.10	Compliance with the National Historic Preservation Act.....	11
2.11	Compliance with the Endangered Species Act .....	12
2.12	State-Listed Species .....	12
2.13	Eagle and Osprey Management .....	13
2.14	Invasive Species Management.....	13
2.15	Fish Entrainment and Mortality .....	13
 <b>3.0</b>	 <b>MEASURES THAT THE PARTIES AGREE SHOULD BE INCORPORATED IN THE TERMS OF THE LICENSE.....</b>	 <b>15</b>
3.1	Daily Impoundment Fluctuation as Part of Normal Operations .....	15
3.2	Base Flows .....	17
3.3	Bypass Flows .....	18
3.4	Seasonal Impoundment Fluctuation.....	20
3.5	Loon Nesting Rafts .....	21
3.6	Fish Protection and Passage.....	21
3.7	Trout Stocking .....	25
3.8	Recreational Enhancements .....	26
3.9	Stream Flow and Water Level Monitoring Plan .....	27

4.0 ADDITIONAL ENHANCEMENT COMMITMENTS (NOT TO BE INCLUDED IN LICENSE) .....30

4.1 Little River Parking Area.....30

4.2 River Management Fund.....30

4.3 Additional Recreational Facilities.....30

**APPENDICES**

APPENDIX A - COMMON LOON NESTING PLATFORM INSTALLATION AND MONITORING PLAN

APPENDIX B - BROWNS FALLS BYPASSED REACH TROUT STOCKING AND MONITORING PLAN

**LIST OF TABLES**

2-1 MASTER IMPLEMENTATION SCHEDULE FOR THE OSWEGATCHIE RIVER HYDROELECTRIC PROJECT (BASED ON AN EFFECTIVE DATE OF JANUARY 1, 2013, FOR THE NEW LICENSE) ..... 7

3-1 OSWEGATCHIE RIVER HYDROELECTRIC PROJECT NORMAL IMPOUNDMENT FLUCTUATION ..... 15

3-2 OSWEGATCHIE RIVER HYDROELECTRIC PROJECT BASE FLOWS ..... 17

3-3 OSWEGATCHIE RIVER HYDROELECTRIC PROJECT BYPASS FLOWS ..... 19

3-4 OSWEGATCHIE RIVER HYDROELECTRIC PROJECT SCHEDULE FOR MODIFICATION OF TRASHRACKS ..... 22



## **OSWEGATCHIE RIVER PROJECT**

### **OFFER OF SETTLEMENT**

#### **1.0 INTRODUCTION**

##### The Agreement and the Parties

This agreement (the Offer of Settlement) dated January 21, 2011, is made and entered into pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or the Commission) (18 CFR § 385.602) by and among the following entities who shall, except as otherwise noted, be referred hereafter to as “Party” and collectively as “Parties”:

- Adirondack Mountain Club
- Adirondack Park Agency (APA)
- Clifton-Fine Economic Development Corp, 5 Ponds Subcommittee
- Erie Boulevard Hydropower, L.P. (Erie or Licensee)
- St. Lawrence County
- New York State Department of Environmental Conservation (NYSDEC)
- New York State Council of Trout Unlimited
- U.S. Department of the Interior (DOI): U.S. Fish and Wildlife Service (USFWS) and National Park Service (NPS)

#### **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 an integrated and indivisible set of measures intended to address non-power and power values relating to the licensing of the

Oswegatchie River Project (FERC No. 2713) (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 FERC, except where expressly noted to the contrary in the Offer of Settlement, incorporate as license conditions in the new license each of the commitments that the Licensee has agreed to undertake in Section 3.0<sup>1</sup> of this Offer of Settlement. The term “license conditions” is intended to mean numbered articles of the license.

### **1.3 Purpose and Goals**

The purpose of this Offer of Settlement is to serve as the final agreement that has been reached as the result of comprehensive discussions among the Parties with regard to the referenced hydroelectric Project with the relicense application filed with 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 Project with appropriate long-term environmental and recreational protection, enhancement, 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 Project.

### **1.4 Project Decommissioning**

This Offer of Settlement does not include any provisions relating to decommissioning or dam removal of the Oswegatchie Project in whole or part. With or without amendment of this Offer of Settlement, any Party may seek such further relief from FERC regarding such

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<sup>1</sup> This includes Sections 3.1.1, 3.1.2, 3.1.3, 3.2.1, 3.2.2, 3.3.1, 3.3.2, 3.4.1, 3.4.2, 3.5.1, 3.6.1.1, 3.6.1.2.3, 3.6.1.2.4, 3.6.2, 3.6.3, 3.7.1, 3.8.1, 3.9.1, and 3.9.2.

decommissioning as FERC may order, recognizing that no Party to this Offer of Settlement has been or is currently advocating decommissioning of any Project facilities at this time. 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 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 process to be undertaken by 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 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 development.

## **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, state legislatures, or local legislatures, or administratively allocated for the purpose of this Offer of Settlement for the fiscal year; or involving 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 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 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 required minimum instantaneous instream flow, measured in cubic feet per second (cfs), to be continuously released from the Project's tailraces downstream of each development.
- Bypassed Flow: The flow intentionally and continuously released into the Browns Falls, South Edwards, or Oswegatchie bypassed reaches.
- Bypassed Reach: The portion of the original river beds associated with the Browns Falls, South Edwards, or Oswegatchie developments where water has been diverted for the purposes of producing electricity.
- Elevation: Vertical distance, measured in feet, above mean sea level (msl) using U.S. Geological Survey (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.

- Left/Right Bank: The left or right bank as seen looking downstream.
- License Issuance and Acceptance: For purposes of this Offer of Settlement, “License Issuance and Acceptance” means that FERC issues a new license consistent with the terms of the Offer of Settlement relative to the particular enhancement being considered.
- Licensee: Erie Boulevard Hydropower, L.P. (Erie), or its successor.
- Normal Operation: The daily operation of the Project that may involve utilization of allowable impoundment elevation fluctuations as needed to manage river flows and produce energy.

## **1.10 Offer of Settlement**

The Parties agree that within 30 days of the effective date of this Offer of Settlement, the Licensee shall file this Offer of Settlement with the Commission pursuant to 18 CFR § 385.602.

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

### **2.1 License Term**

The Parties agree that, based upon and in consideration of the Offer of Settlement provisions identified in Section 3.0, the license should be for a term of 40 years from the date of license issuance. The Water Quality Certificate issued by the NYSDEC under Section 401 of the Clean Water Act will contain the following language regarding license term:

*This certification includes and incorporates the provisions of the Relicensing Offer of Settlement addressing New License Terms and Conditions, dated January 21, 2011, and filed with the Federal Energy Regulatory Commission to the extent that the agreement pertains to the applicant's compliance with the New York State Water Quality Standards necessary and appropriate for issuance of and compliance with this Certification.*

### **2.2 Implementation Schedule**

Table 2-1 defines the schedule to implement protection, mitigation, and enhancement measures agreed upon within this Offer of Settlement. This schedule is based upon an expected license issuance date of December 31, 2012, with an effective date for the new license commencing January 1, 2013. Unless otherwise indicated, implementation shall occur no later than December 31 of each year indicated in Table 2-1. Any deferral of implementation shall be based solely upon the effective date of a new license or any rehearings or appeals as defined in Section 2.4. This table summarizes the requirements contained in the articles in Section 3 of this Offer of Settlement; in case of conflict, Section 3 is controlling.

**TABLE 2-1**  
**MASTER IMPLEMENTATION SCHEDULE FOR THE OSWEGATCHIE RIVER HYDROELECTRIC PROJECT**  
**(BASED ON AN EFFECTIVE DATE OF JANUARY 1, 2013, FOR THE NEW LICENSE)**

Site	Impoundment Fluctuations	Base Flows	Bypass Flows <sup>1</sup>	Crest Control	Loon Nesting Rafts	Fish Protection <sup>2</sup>	Downstream Passage	Upstream Passage
Browns Falls	01/01/13	NA	04/01/13	2016	04/25/13	2019-2023	NA	NA
Flat Rock	01/01/13	Existing	NA	NA	04/25/13	2019-2023	NA	NA
South Edwards	01/01/13	Existing	Existing	2016	04/25/13	2019-2023	NA	NA
Oswegatchie	Existing	Existing	Existing	NA	04/25/13	Existing	Existing	NA
Heuvelton	01/01/13	Existing	NA	NA	NA	2017	2017	2017
Eel Weir	01/01/13	Existing	NA	NA	NA	2013	2015	2015
Site	Passage Testing <sup>3</sup>	Trout Stocking	Trout Monitoring	Recreation	Stream Flow Monitoring Plan	Gages	Little River Parking <sup>4</sup>	River Fund <sup>3</sup>
Browns Falls	NA	2013-2017	2014, 2016, 2018	2015	09/30/2013	06/30/2014	NA	2013
Flat Rock	NA	NA	NA	2015	09/30/2013	06/30/2014	2017	2013
South Edwards	NA	NA	NA	2015	09/30/2013	06/30/2014	NA	2013
Oswegatchie	NA	NA	NA	2015	09/30/2013	06/30/2014	NA	2013
Heuvelton	2019	NA	NA	2015	09/30/2013	06/30/2014	NA	2013
Eel Weir	2017	NA	NA	2015	09/30/2013	06/30/2014	NA	2013

1. The existing flows in the Browns Falls bypassed reach will remain in place until the seasonal changeover in April 2013, at which time the year round flow will permanently commence.
2. One site will receive fish protection every two years commencing in 2019 (i.e., one in 2019, one in 2021, and one in 2023) with the Licensee to determine the order of replacement.
3. Requires the development of a Fishway Effectiveness Testing Plan in conjunction with the USFWS and the NYSDEC.
4. Although included in this Offer of Settlement, it is not the intent of the Settlement Parties to include this measure in a new license to be issued by FERC.

## **2.3 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 through 3.9 (see footnote 1 for specific subsections) 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, the Parties request that it 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 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 through 3.9; 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 2.4; 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.

Thereafter, the Offer of Settlement shall have no force and effect and the Parties shall in any subsequent judicial proceedings take the position that it may not serve as the basis for which the Commission's public interest determination was made in connection with the issuance of the new license and that the new license, lacking such basis, should have no force and effect and should be considered null and void.

## **2.4 Rehearings and Judicial Review**

The Parties agree not to file a request with 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) 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 2.3. 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.

## **2.5 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 the 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.

## **2.6 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 FERC pursuant to any reopener condition contained in the new license, including any exercise by the Secretary of the DOI relating to her/his fishway prescription authority under §18 of the Federal Power Act (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 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, consult 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 a summary of their recommendations and of its response to those recommendations. The filing Party shall also serve a copy of its petition to all the other Parties.

## **2.7 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 that 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 that only relate to, but would not alter 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 that 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 to 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.

## **2.8 Offer of Settlement Amendments**

The Parties agree that 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. Any Party proposing such an amendment to this Offer of Settlement shall provide all Parties with at least 60 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. This Offer of Settlement may only be amended without the consent of a party if that party has made no response to written notice of proposed amendment within 60 days of such notice, thus indicating that it has ceased to exist or be interested in the Project. 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. If the amendment would require modification of the license or any other permit, the Licensee shall file all applications to amend any license or permits necessary to effectuate the agreed-upon changes, and the other Parties will support such efforts.

## **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 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 Offer of Settlement 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 National Historic Preservation Act**

The Licensee will develop a Historic Properties Management Plan (HPMP) in consultation with the Oneida Indian Nation and the New York State Office of Parks, Recreation and Historic Preservation (OPRHP). The HPMP will be developed in accordance with the Guidelines for the Development of Historic Properties Management Plans for FERC

Hydroelectric Projects, promulgated by the Commission and the Advisory Council on Historic Preservation in 2002. The HPMP shall include provisions for monitoring archaeological resources and for continued coordination and consultation with the Oneida Indian Nation and the OPRHP throughout the term of the license.

## **2.11 Compliance with the Endangered Species Act**

As of November 19, 2010, the USFWS has determined that, based on the information available as of that date, except for occasional transient individuals, no Federally listed or proposed endangered or threatened species under the USFWS 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 further Endangered Species Act coordination or consultation with the USFWS is required at this time. Should Project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered.

## **2.12 State-Listed Species**

Through consultation with the NYSDEC of December 10, 2010, and identified during field studies associated with project relicensing, the following state listed endangered, threatened or species of special concern (as identified in §182.2(g, h, i) of 6NYCRR Part 182) have been identified in and adjacent to the Project areas:

- Golden eagle (*Aquila chrysaetos*) - Endangered
- Lake sturgeon (*Acipenser fulvescens*) - Threatened
- Eastern sand darter (*Ammocrypta pellucida*) - Threatened
- Mooneye (*Hiodon tergisus*) - Threatened
- Bald eagle (*Haliaeetus leucocephalus*) - Threatened
- Common loon (*Gavia immer*) - Special Concern
- Osprey (*Pandion haliaetus*) – Special Concern

Because of the presence of these New York State-listed species and the potential for additional species to be present in the Project area during the term of the new license, the Licensee shall, upon identification of any additional State-listed species during operation, maintenance, or construction activities, notify the NYSDEC in an appropriate and timely manner pursuant to the Environmental Conservation Law and regulations pertaining to state-listed species. In addition, prior to any construction or major maintenance activities that require consultation with the NYSDEC, the Licensee will consult with the NYSDEC regarding the best management practices to be performed to avoid potential impacts to State-listed species.

### **2.13 Eagle and Osprey Management**

Prior to any tree clearing activities within the project boundary, the Licensee agrees to survey the area for eagle and osprey nests. If a nest is identified, then the Licensee will consult with the NYSDEC and the USFWS prior to any clearing activities. In addition, if during the term of this license an eagle or osprey nest is identified in or adjacent to the project boundary, the Licensee will notify the NYSDEC and the USFWS. If such a nest is identified, the Licensee will develop and maintain an Eagle and Osprey Management Plan, which will define spatial and temporal limits of construction and land clearing activities.

### **2.14 Invasive Species Management**

The Parties agree that the Licensee shall develop an Invasive Species Management Plan and shall submit the plan to the NYSDEC and the USFWS for review and approval. The plan shall include measures to prevent the introduction and/or spread of invasive species during construction, maintenance, and operational activities, as defined by the NYSDEC Office of Invasive Species Coordination. In addition, the Licensee shall install and maintain signage to be provided by the NYSDEC regarding invasive species.

### **2.15 Fish Entrainment and Mortality**

Except for the measures outlined in Section 3.6 of this Offer of Settlement, the Parties agree that, unless prescribed by DOI under Section 18 of the FPA, during the term of the

license they will not request that the Commission order the Licensee to: (1) provide any additional upstream or downstream fish passage or movement structures; (2) test the effectiveness of any, or all, components of the fish movement or protection measures and/or structures; (3) make qualitative or quantitative determinations of fish entrainment and/or mortality; (4) provide compensation for any fish entrainment or mortality associated with the operation of the facility in accordance with this Offer of Settlement; (5) increase the level of protection or movement as agreed to by this Settlement Agreement for the term of the license, and/or (6) perform any activities associated with, or be responsible for any potential adverse effects (e.g., the distribution of invasive species or diseased fish) resulting from the operation of the fish passage structures defined in Section 3.6.

### **3.0 MEASURES THAT THE PARTIES AGREE SHOULD BE INCORPORATED IN THE TERMS OF THE LICENSE**

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

##### **3.1.1 General Agreements**

Upon issuance and acceptance of a new FERC license or by January 1, 2013, whichever occurs later, the Licensee shall limit daily impoundment fluctuations as part of normal operations, as specified in Table 3-1.

**TABLE 3-1  
OSWEGATCHIE RIVER HYDROELECTRIC PROJECT  
NORMAL IMPOUNDMENT FLUCTUATION**

<b>Impoundment</b>	<b>Normal Impoundment Fluctuation</b>
Browns Falls	4.0 feet measured in the downward direction from top of crest of spillway (1,347 feet msl) or flashboards (1,349 feet msl) from July 15 through March 14 and 2.0 feet measured in the downward direction from top of crest of spillway or crest control device from March 15 through July 14
Flat Rock	4.0 feet measured in the downward direction from top of crest of spillway (1,080 feet msl) from July 15 through March 14 and 2.0 feet measured in the downward direction from top of crest of spillway from March 15 through July 14
South Edwards	6.0 feet measured in the downward direction from top of crest of spillway (843.2 feet msl) or flashboards (845.2 feet msl) from July 15 through March 14 and 2.0 feet measured in downward the direction from top of crest of spillway or crest control device from March 15 through July 14
Oswegatchie	0.4 foot measured in the downward direction from top of crest of spillway (758.6 feet msl)
Heuvelton	0.5 foot measured in the downward direction from the top of the tainter gate crest or equivalent (287.6 feet msl)
Eel Weir	0.5 foot measured in the downward direction from top of crest of spillway (272 feet msl)

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, tainter gate, flashboards, or rubber dam, as appropriate, as presented in Table 3-1. 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.

### 3.1.2 Emergency Exceptions

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

### 3.1.3 Significant Hydrologic Conditions

In addition, beyond the conditions stated above, based on consultation with and written approval from the NYSDEC and the USFWS, the Licensee may increase the drawdown allowance on a case-by-case basis to help account for significant hydrological conditions (e.g., rain or snow-melt events). Any such additional allowances would be considered on a case-by-case basis and would be initiated by a request made by the Licensee at least five business days in advance of the proposed drawdown, or soon as the Licensee foresees the need to modify the fluctuation limitations. If granted by the NYSDEC and the USFWS, any additional drawdown allowances to account for significant hydrological conditions would be performed in accordance with an agreement between the NYSDEC, the USFWS, and the Licensee specific to the hydrological condition to be addressed by the Licensee's request.

### 3.1.4 Justification

The Parties determined that wetlands and habitats associated with the Project's impoundments would benefit through a reduction of normal fluctuation limits (currently unlimited for each of the six impoundments, with the exception of the Oswegatchie impoundment, which has a limitation of 0.4 foot). In addition, based on the fish species and habitat areas associated with the three upper impoundments, it was determined by Project stakeholders that normal fluctuation levels of the Browns Falls, Flat Rock, and South Edwards



impoundments be further limited during the spring fish spawning and loon breeding seasons (March 15 through July 14).

Furthermore, the Parties recognize that over the course of the license, significant hydrological conditions (e.g., rain or snow-melt events) may occur that would prompt the Licensee to request an increase to the established drawdown allowances. In the case of such conditions, the Licensee may initiate consultation with the NYSDEC and the USFWS to increase the allowable drawdown limitations; however, no such additional allowances shall be granted without written authorization by the NYSDEC and the USFWS.

## 3.2 Base Flows

### 3.2.1 General Agreements

As presented in Table 3-2, consistent with the existing license requirements, the Licensee shall continue to maintain the following base flows (or inflow to the respective impoundment, whichever is less) from the Project's tailraces. If, due to limited inflow into a respective impoundment, the Licensee reduces baseflow beyond the values presented in Table 3-2, the Licensee will notify the NYSDEC within 24 hours of reduction of flow. In addition, within 24 hours of returning the baseflow to the established level, the Licensee will notify the NYSDEC.

**TABLE 3-2**  
**OSWEGATCHIE RIVER HYDROELECTRIC PROJECT BASE FLOWS**

<b>Development</b>	<b>Base flow<sup>1,2</sup></b>
Browns Falls	NA <sup>3</sup>
Flat Rock	160 cfs
South Edwards	160 cfs
Oswegatchie	160 cfs
Heuvelton	275 cfs
Eel Weir	325 cfs

1. Or inflow to the respective impoundment, whichever is less.
2. All base flows shall be established and monitored in accordance with the Stream-Flow and Water-Level Monitoring Plan as described in Section 3.9 of this Offer of Settlement.
3. Given that the Browns Falls Development flows directly into the Flat Rock impoundment, the Parties agree that establishing a base flow for the Browns Falls Development is not necessary.

### 3.2.2 Emergency Exceptions

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

### 3.2.3 Justification

The existing base flows were established in 1987 during the initial licensing for the Project. The Delphi Flow Study conducted as part of the 2012 relicensing effort demonstrated that the existing base flows fully meet all management goals<sup>2</sup> for each river reach.

## 3.3 Bypass Flows

### 3.3.1 General Agreements

As presented in Table 3-3, the Licensee shall maintain the following bypass flows (or inflow to the respective impoundment, whichever is less) in the Project's bypassed reaches. Consistent with the existing license requirements, the Licensee shall continue to provide year round bypassed flows of 60-cfs and 40-cfs in the South Edwards and Oswegatchie bypassed reaches, respectively. The newly established 30-cfs, year-round flow in the Browns Falls bypassed reach will commence upon issuance and acceptance of a new FERC license or by April 1, 2013, whichever occurs later.

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<sup>2</sup> The river's management goals were identified during the Delphi Study scoping process as part of the overall evaluation for assessing potential habitat availability and species utilization.

**TABLE 3-3**  
**OSWEGATCHIE RIVER HYDROELECTRIC PROJECT**  
**BYPASS FLOWS**

<b>Development</b>	<b>Bypass Flows<sup>1,2</sup></b>
Browns Falls	30 cfs
South Edwards	60 cfs <sup>3</sup>
Oswegatchie	40 cfs

1. All bypass flows shall be provided on a year-round basis.
2. All bypass flows shall be established and monitored in accordance with the Stream-Flow and Water-Level Monitoring Plan as described in Section 3.9 of this Offer of Settlement.
3. The flows in the South Edwards bypassed reach shall be provided by an existing minimum flow unit or other means (e.g., pipeline discharge) as determined by the Licensee.

### 3.3.2 Emergency Exceptions

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

### 3.3.3 Justification

The Delphi Flow Studies conducted as part of the 2012 relicensing effort demonstrated that the existing year-round bypassed reach flows of 60 cfs at South Edwards and 40 cfs at Oswegatchie fully meet all management goals defined in the Delphi Studies. The existing seasonal split of 30/15 cfs in the Browns Falls bypassed reach failed to adequately meet the Delphi Study management goals (e.g., associated with winter habitat). However, a flow of 30 cfs year-round in the Browns Falls bypassed reach fully meets most of these management goals and nearly meets (2.5 on a scale of 3) all remaining important management goals.

### **3.4 Seasonal Impoundment Fluctuation**

#### **3.4.1 General Agreements**

By December 31, 2016, the Licensee will replace the existing seasonal 2-foot-high flashboards associated with the Browns Falls and South Edwards developments with crest control devices (e.g., 2-foot-high rubber dams and/or 2-foot-high flashboards intended to remain in place on a year-round basis) to eliminate routine seasonal fluctuation. If installed, year-round flashboards will be designed to fail when overtopped in excess of 2 feet of river flow. The scheduling of the modification or replacement of the existing seasonal flashboards will be performed in consultation with the NYSDEC, the USFWS, and the APA.

#### **3.4.2 Emergency Exceptions**

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

#### **3.4.3 Justification**

The elimination of seasonal fluctuation associated with the Browns Falls and South Edwards impoundments resulting from the current operational practice of installing and removing the developments' 2-foot flashboards each spring and fall, respectively, should enhance the habitat (e.g., wetlands, and fish, wildlife<sup>3</sup>, and invertebrate habitats) associated with the impoundments.

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3 Wildlife includes amphibians, reptiles, waterfowl, birds, furbearers, and non-furbearing animals.

### **3.5 Loon Nesting Rafts**

#### **3.5.1 General Agreements**

Upon issuance and acceptance of a new FERC license or by May 1, 2013, whichever occurs later, the Licensee will implement the Common Loon Nesting Platform Installation and Monitoring Plan (see Appendix A) developed in consultation with the NYSDEC, the USFWS, APA, and the Biodiversity Research Institute. The plan includes details for the deployment and monitoring of loon nesting platforms to be deployed seasonally on the Browns Falls, Flat Rock, South Edwards, and Oswegatchie impoundments. The platforms will be deployed and monitored as indicated in the plan. If during the 5-year period, loons use the deployed rafts for nesting, the Licensee will continue the seasonal deployment of the nesting rafts in accordance with the plan.

#### **3.5.2 Justification**

Common loons (*Gavia immer*) have been observed on the upper three impoundments (Browns Falls, Flat Rock, and South Edwards) and the potential exists that any of these impoundments, as well as the Oswegatchie impoundment, could provide suitable nesting habitat. The deployment of floating nesting platforms will supply nesting habitat that is relatively immune to impoundment fluctuations.

### **3.6 Fish Protection and Passage**

#### **3.6.1 General Agreements**

##### 3.6.1.1 Fish Protection

With the exception of the Oswegatchie Development, which has year-round trashracks with 1-inch clear spacing installed, the Licensee will modify the existing trashracks associated with each development to provide trashracks with 1-inch clear spacing on a year-round or seasonal basis. The Licensee will determine if the modification to provide the reduced clear spacing will be on a year-round basis or on a seasonal basis in accordance with the schedule presented in Table 3-4. If performed on a seasonal basis, the reduced clear spacing must be

provided annually from March 15 through November 30 and performed in accordance with the trashrack installation monitoring plan to be developed in consultation with the NYSDEC and the USFWS. This plan will include a reporting mechanism for the Licensee to notify the agencies when the seasonal trashrack installation is completed each year. The plan will include procedures to be followed if the installation is delayed by weather conditions or other factors. The plan will also include criteria to determine whether the seasonal installation is successful or whether the Licensee must revert to permanent installation. Development of the plan would occur at least 12 months prior to the installation of seasonal trashracks at any development.

**TABLE 3-4**  
**OSWEGATCHIE RIVER HYDROELECTRIC PROJECT**  
**SCHEDULE FOR MODIFICATION OF TRASHRACKS**

<b>Development</b>	<b>Date for Trashrack Modification</b>
Browns Falls	December 31, 2019 through December 31, 2023 <sup>1</sup>
Flat Rock	December 31, 2019 through December 31, 2023 <sup>1</sup>
South Edwards	December 31, 2019 through December 31, 2023 <sup>1</sup>
Heuvelton	December 31, 2017
Eel Weir	December 31, 2013

1. The Licensee shall modify/replace the trashracks for the Browns Falls, Flat Rock, and South Edwards developments based on a schedule of modifying one set of trashracks every 2 years. Installation of the first trashrack project would be by December 31, 2019 and the last installation no later than December 31, 2023. Therefore, between the three sets of trashracks, one set will be modified/replaced by December 31, 2019, one set will be modified/replaced by December 31, 2021, and the final set will be modified/replaced by December 31, 2023. However, it will be at the Licensee's discretion as to the order of modifying each of the three developments.

### 3.6.1.2 Fish Passage

#### *3.6.1.2.1 Upper Three Developments*

The Offer of Settlement does not require any fishways for upstream passage or downstream fish passage or movement structures to be constructed at the Browns Falls, Flat Rock, or South Edwards developments.

#### *3.6.1.2.2 Oswegatchie Development*

The Offer of Settlement does not require any fishway for upstream passage to be constructed at the Oswegatchie Development. The Licensee will continue to maintain a 40-

cfs flow through a notch in the spillway to provide for downstream fish movement at this development. The Offer of Settlement does not require testing of the fish movement facility at the Oswegatchie Development.

#### *3.6.1.2.3 Eel Weir Development*

By December 31, 2015, the Licensee will construct a fishway for upstream passage and a downstream fish passage structure associated with the Eel Weir Development intended to move lake sturgeon (*Acipenser fulvescens*), American eel (*Anguilla rostrata*), and other fish species upstream and downstream of the development. The Licensee will operate the passage structures annually on a seasonal basis from March 15 through November 30. The structures to be constructed will be based upon conceptual and final designs to be developed by the Licensee in consultation with the USFWS and the NYSDEC. Prior to construction, the final design plans will be approved by the USFWS, the NYSDEC, and the Commission. The second field season following construction of the structures, the Licensee will perform effectiveness testing of the upstream and downstream structures in accordance with the Fishway Effectiveness Testing Plan (Effectiveness Plan). The Effectiveness Plan, which will focus primarily on American eel and lake sturgeon, will be developed in conjunction with the NYSDEC and the USFWS following approval of the final design plans. Prior to implementation of the effectiveness testing, the Effectiveness Plan will be approved by the USFWS, the NYSDEC, and the Commission. Based on the results of the effectiveness testing, the Licensee may be required to modify structures or operations. Although the upstream fishway structure will be expected to pass American eel, the Licensee will construct a standard eel ladder if the effectiveness testing demonstrates that eels cannot effectively use the structure. Any fishway constructed for the sole purpose of upstream passage of American eel would be installed no later than one year after an upstream eel passage facility is completed at the downstream Ogdensburg Project (FERC No. 9821), or within one year of the determination (based on the testing) that an eel ladder is needed, whichever is later.

#### *3.6.1.2.4 Heuvelton Development*

By December 31, 2017, the Licensee will construct a fishway for upstream passage and a downstream fish passage structure associated with the Heuvelton Development intended

to move lake sturgeon, American eel, and other fish species upstream and downstream of the development. The Licensee will operate the passage structures annually on a seasonal basis from March 15 through November 30. The structures to be constructed will be based upon conceptual and final designs to be developed by the Licensee in consultation with the USFWS and the NYSDEC. Prior to construction, the final design plans will be approved by the USFWS, the NYSDEC, and the Commission. The second field season following construction of the structures, the Licensee will perform effectiveness testing of the upstream and downstream structures in accordance with the Effectiveness Plan. The Effectiveness Plan, which will focus primarily on American Eel and lake sturgeon, will be developed in conjunction with the NYSDEC and the USFWS following approval of the final design plans. Prior to implementation of the effectiveness testing, the Effectiveness Plan will be approved by the USFWS, the NYSDEC, and the Commission. Based on the results of the effectiveness testing, the Licensee may be required to modify structures or operations. Although the upstream fishway structure will be expected to pass American eel, the Licensee will construct a standard eel ladder if the effectiveness testing demonstrates that eels cannot effectively use the structure. Any fishway constructed for the sole purpose of upstream passage of American eel would be installed no later than one year after an upstream eel passage facility is completed at the downstream Ogdensburg Project (FERC No. 9821), or within one year of the determination (based on the testing) that an eel ladder is needed, whichever is later.

### 3.6.2 Reservation of Authority

In addition to the protection and passage measures outlined in this section, the DOI will reserve its authority under Section 18 of the FPA to prescribe additional upstream or downstream fishway facilities in the future. This reservation ensures that adequate facilities for fish passage will be in place should management goals or needs change during the term of the license.

### 3.6.3 Emergency Exceptions

Fish passage and/or protection measures may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, and for limited periods upon prior



mutual agreement between the Licensee, the USFWS, and the NYSDEC. If the requirements of this commitment are so modified, the Licensee shall notify the FERC, the NYSDEC, and the USFWS as soon as possible, but no later than (10) business days after each such incident.

### 3.6.4 Justification

#### 3.6.4.1 Fish Protection

The use of 1-inch clear-spaced trashracks to exclude adult game fish and other fish from potential entrainment has become standard for hydroelectric facilities located on rivers similar to the Oswegatchie River in New York. Since limited fish movements occur in the winter months, the use of seasonal 1-inch trashracks is appropriate where seasonal installation is feasible.

#### 3.6.4.2 Fish Passage

Lake sturgeon are present above and below the Eel Weir and Heuvelton dams, but movements between the impoundments are restricted. Providing upstream passage at Eel Weir will open up about 43 miles of habitat (including the 17 mile-long Black Lake) for many fish species, while upstream passage at Heuvelton will open up an additional 48 miles of riverine habitat up to the natural barrier at Natural Dam. When upstream passage at the downstream Ogdensburg Dam is provided, fish from Lake Ontario and the St. Lawrence River, including several species of international importance, such as the American eel, will be able to move into this additional 91 miles of tributary habitat. Allowing the movement of lake sturgeon, American eel, and other fish species above Eel Weir and Heuvelton requires that they also have effective downstream passage.

## **3.7 Trout Stocking**

### 3.7.1 General Agreements

In accordance with a Trout Stocking and Monitoring Plan (see Appendix B) developed in consultation with the NYSDEC, the USFWS, and Trout Unlimited, the Licensee will stock trout and perform seasonal continuous water temperature monitoring in the Browns Falls

bypassed reach on an annual basis from 2013 through 2017. In addition to stocking the bypassed reach with trout and monitoring water temperatures, the Licensee will perform sampling events in 2014, 2016, and 2018 to evaluate the stocking success.

### 3.7.2 Justification

Based on sampling information to date, a substantial trout population has not become successfully established in the Browns Falls bypassed reach. Since this may at least partially be due to a lack of source fish, the Parties agreed to stock trout for 5 years and monitor biennially to attempt to establish a self-sustaining trout population in the bypassed reach.

## 3.8 Recreational Enhancements

### 3.8.1 General Agreements

In accordance with the Recreation Management Plan, the Licensee will complete the following recreational enhancements within 36 months of license issuance and acceptance:

- Develop river access portage routes, including take-out, put-in, herd paths (where necessary), and signage for each of the six developments.
- Formalize a parking area in the vicinity of the Browns Falls dam.
- Formalize a parking area with a picnic table in the vicinity of the Browns Falls powerhouse.
- Modify the Flat Rock boat launch area to include an Americans with Disabilities Act-compliant picnic table, parking area, and seasonal boat dock.
- Develop a parking, picnic, and car-top boat launch area to provide access to the South Edwards impoundment adjacent to Route 58. If it is determined through further design activities that this site proves infeasible, a similar recreation area will be developed adjacent to the South Edwards entrance.
- Develop a parking area and boat launch immediately upstream of the existing Heuvelton day-use area.
- Develop and install a tri-sided kiosk at the Flat Rock day use area that will present educational and historical information regarding the Oswegatchie River and

hydropower. Also an online and/or paper brochure indicating available recreation opportunities and historical information at the Project developments will be developed.

### 3.8.2 Monitoring

This Offer of Settlement does not require the Licensee to monitor the use of any recreational facilities included in this Offer of Settlement beyond the requirements of FERC Form 80 reporting.

### 3.8.3 Justification

The Parties agreed to formalize existing informal recreation areas and to provide additional facilities where deemed appropriate.

## 3.9 Stream Flow and Water Level Monitoring Plan

### 3.9.1 General Agreements

The Licensee shall develop the Stream Flow and Water Level Monitoring Plan in consultation with the NYSDEC and the USFWS within 9 months of license issuance and acceptance. The monitoring plan shall include all gages and/or equipment to:

- Determine head pond elevations,
- Determine bypass flows,
- Determine tailrace base flows, and
- Provide an appropriate means of independent verification by the NYSDEC, the USFWS, and APA.

All staff gages, pins, and ancillary equipment required by the monitoring plan, including head pond gages, shall be made operational and calibrated within 18 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 head pond water levels, bypass flows, and tailrace base flows. Binary staff gages will be visible to the general public.

Within 24 months of license issuance and acceptance, as part of the Stream Flow and Water Level Monitoring Plan, the Licensee shall continue to fund, as well as upgrade to real time, the Flat Rock USGS gage for the term of the license. At the Licensee's discretion, the Licensee may discontinue funding of the Flat Rock USGS gage in lieu of providing a means of access to equivalent real-time data to the NYSDEC, the USFWS, and the general public. If the Licensee chooses to discontinue the funding of the Flat Rock USGS gage, the Licensee will consult with the NYSDEC and USFWS on the adequacy of the alternative means of real-time data and obtain the agencies' concurrence that it is acceptable before discontinuing funding the USGS gage.

### 3.9.2 Record-Keeping

As to be defined in the Stream Flow and Water Level Monitoring Plan, the Licensee shall keep accurate and sufficient records of the impoundment elevations and Project flows to the satisfaction of the NYSDEC and shall provide such data in a format and at intervals as required by the NYSDEC. Consistent with similar plans developed in consultation with the NYSDEC, the Licensee anticipates that such data would be provided in spreadsheet format in intervals ranging from 15 minutes to 1 hour and in increments ranging from 0.1-foot to 1-foot. The NYSDEC will provide the Licensee with a contact person to receive such information. All records will be made available for inspection at the Licensee's principal business office within New York State within 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 7-day-per-week contact person to provide immediate verification of monitored flows and responses to questions about abnormal or emergency conditions.

### 3.9.3 Justification

The NYSDEC and the USFWS have required that flows be verified through stream gaging methods for the initial placement of visual gages and markers for other hydroelectric facilities across New York State. Experience throughout the State has confirmed that the development of a Stream Flow and Water Level Monitoring Plan and the associated gaging and data management activities has proven to be an essential component of a water flow and elevation management program. Such a plan, and the associated monitoring, provides the tools necessary to verify the water flows and elevations presented in this Agreement. Aside from providing the agencies with a means to independently monitor flows, the visual gages and markers have proved to be useful to the licensees as well.

## **4.0 ADDITIONAL ENHANCEMENT COMMITMENTS (Not to be Included in License)**

### **4.1 Little River Parking Area**

Within five year of license issuance and acceptance, the Licensee agrees to develop a 40 feet wide by 100 feet long gravel parking area located on property for which the NYSDEC has acquired easement rights and which is located along Sanford Road adjacent to Browns Falls Road near the Little River. The NYSDEC will provide appropriate signage for the parking area. Given the location of the parking area relative to the established Project boundary, this parking area will not be considered a portion of the FERC Project nor maintained by the Licensee following initial development.

### **4.2 River Management Fund**

Within 12 months of license issuance, the Licensee, in consultation with the Settlement Parties, agrees to establish a River Management Fund (Fund). Following establishment of the Fund, the Licensee will contribute \$2,000 per year (escalated by 2% annually) to the Fund for the term of the License. The Fund may be used for projects, studies, or services, designated by majority vote of the signatories to this Offer of Settlement, 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.

### **4.3 Additional Recreational Facilities**

The Parties agree that no additional recreational facilities beyond those identified in Section 3.8 will be required as part of this Offer of Settlement. 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) day use areas associated with the Flat Rock and Heuvelton developments; (2) river access associated with Cranberry Lake, the Newton Falls Project, the

Flat Rock Development, the Village of Heuvelton boat launch, Eel Weir State Park, and the City of Ogdensburg; and (3) the shoreline fishing areas located throughout the watershed.

Oswegatchie River Project

Offer of Settlement

**SETTLEMENT AGREEMENT  
OSWEGATCHIE RIVER PROJECT**

**Organization:** Adirondack Mountain Club

**By:** Neil S. Woodward

**Title:** Executive Director

**Date:** February 9, 2011



**SETTLEMENT AGREEMENT  
OSWEGATCHIE RIVER PROJECT**

**Organization:** Adirondack Mountain Club

**By:** Robert C. Waples

**Title:** Member

**Date:** 01/24/11

**SETTLEMENT AGREEMENT  
OSWEGATCHIE RIVER PROJECT**

**Organization:** Adirondack Park Agency

**By:** *Jerry Martinez*

**Title:** Executive Director

**Date:** 2-9-11

**SETTLEMENT AGREEMENT  
OSWEGATCHIE RIVER PROJECT**

**Organization:** Clifton-Fine Economic Development Corp, 5  
Ponds Subcommittee

**By:** Sherman Craig

**Title:** Chairman, 5 Ponds Partners

**Date:** Feb 8, 2011



Oswegatchie River Project

Offer of Settlement

**SETTLEMENT AGREEMENT  
OSWEGATCHIE RIVER PROJECT**

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

**By:** 

**Title:** General Manager

**Date:** January 31, 2011

Oswegatchie River Project

Offer of Settlement

**SETTLEMENT AGREEMENT  
OSWEGATCHIE RIVER PROJECT**

**Organization:** St. Lawrence County

**By:** Sally A. Brothers

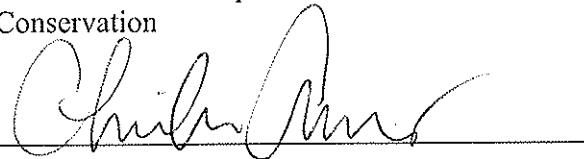
**Title:** Chair, Board of Legislators

**Date:** February 15, 2011

**SETTLEMENT AGREEMENT  
OSWEGATCHIE RIVER PROJECT**

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

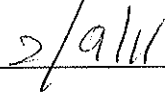
**By:**

A handwritten signature in black ink, appearing to read "Chris Amato", is written over a horizontal line.

Christopher Amato

**Title:** Asst. Commissioner  
Office of Natural Resources

**Date:**

A handwritten date "2/9/11" is written in black ink over a horizontal line.

Oswegatchie River Project

Offer of Settlement

**SETTLEMENT AGREEMENT  
OSWEGATCHIE RIVER PROJECT**

**Organization:** New York State Council of Trout Unlimited

**By:**

*William H. Sullivan*

**Title:**

*Region 5 Vice President*

**Date:**

*26 Jan 2011*

**SETTLEMENT AGREEMENT  
OSWEGATCHIE RIVER PROJECT**

**Organization:** U.S. Department of the Interior,  
U.S. Fish and Wildlife Service

By: David A. Stinebaugh

Title: Field Supervisor, New York Field Office

Date: 1/31/2011



Oswegatchie River Project

Offer of Settlement

**SETTLEMENT AGREEMENT  
OSWEGATCHIE RIVER PROJECT**

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

**By:** Charles Barsby

**Title:** Division Chief, NE Region National Wild & Scenic Rivers

**Date:** February 1, 2011

**APPENDIX A**  
**COMMON LOON NESTING PLATFORM INSTALLATION AND**  
**MONITORING PLAN**

**Oswegatchie River Hydroelectric Project  
(FERC No. 2713)**

**Common Loon Nesting Platform Installation and Monitoring Plan**

**Purpose:**

- This Common Loon Nesting Platform Installation and Monitoring Plan (Plan) has been developed for the Browns Falls, Flat Rock, South Edwards, and Oswegatchie impoundments by the Licensee, in consultation with the New York State Department of Environmental Conservation (NYSDEC), the U.S. Fish and Wildlife Service (USFWS), and the BioDiversity Research Institute. This Plan outlines the details regarding the deployment and monitoring of the nesting platforms (i.e., rafts) for a 5-year period from 2013 through 2017, as well as the reporting and consultation activities associated with the program.
- This Plan also establishes a process to determine if the deployment and monitoring of the nesting platforms will continue beyond 2017.

**Construction, Installation, and Removal of Nesting Platforms:**

- Starting in 2013, the Licensee will deploy 15 nesting platforms on an annual basis for 5 years. The 15 nesting platforms will be distributed to the following locations:
  - Browns Falls impoundment - five nesting platforms
  - Flat Rock impoundment - five nesting platforms
  - South Edwards impoundment - four nesting platforms
  - Oswegatchie impoundment - one nesting platform
- Based on familiarity with the impoundments, the standards associated with the deployment of nesting platforms (DeSorbo et al. 2008), and the location of existing and proposed recreational facilities, the attached three maps indicate the proposed locations for the deployment of the platforms in 2013. If desired by NYSDEC and USFWS, the location of the nesting platforms may be modified prior to deployment in 2013 or during the 5-year program. If any of these two agencies desire a modification in the location of the nesting platforms to be deployed in 2013, the Licensee must be notified prior to October 2012.
- The nesting platforms will be constructed and deployed in accordance with established standards. In addition, the nesting platforms will be equipped with either a natural or man-made avian guard. The design of the nesting platforms is to be based upon the two attached drawings – Loon Nesting Platform Design 1 and Loon Nesting Platform Design 2. Therefore, approximately 50 percent of the nesting platforms will be based upon the DeSorbo design and the remaining platforms will be based on the design to be provided. If any of the two agencies desire a modification in the design of the nesting platforms to be deployed in 2013, the Licensee must be notified prior to April 2012. Following construction of the nesting platforms to be deployed in 2013, the platforms will be repaired as necessary; however, the Licensee does not anticipate a redesign of the platforms.

On an annual basis, pending weather conditions, river flow, and presence of ice on the impoundment, the nesting platforms will be deployed on or about April 25.

- Regarding the removal of the nesting platforms, utilized nesting platforms on which chicks have hatched may be removed for the year after approximately July 15 or 2 weeks after chicks have hatched, whichever is later. Non-utilized platforms, or utilized platforms that have not had chicks successfully hatch, will remain on the impoundment until September 1 of each year.
- Based on annual consultation with NYSDEC and USFWS, the location of the nesting platforms may be modified from year to year. In addition, the number of nesting platforms may be reduced from the numbers listed on Page 1 of this Plan.

### **Monitoring:**

- The Licensee will be responsible for the seasonal monitoring of the installed nesting platforms and impoundment shorelines for the 5-year period of 2013 through 2017.
- Monitoring will be performed on a weekly basis (pending weather conditions) starting 1 week following deployment of the nesting platforms through approximately July 15 of each year, from 2013 through 2017. If chicks hatch, whether through use of the nesting platforms or the impoundment shoreline, the loons will continue to be monitored on a weekly basis to determine if the chick(s) survive the breeding season.
- If eggs are still being incubated on or around July 15, the nest site will continue to be monitored on a weekly basis until the eggs hatch or until it is determined that the nest has failed, and an additional nesting attempt will not be made.
- Along with details regarding nesting activities, additional applicable observations (e.g., adult loons on the impoundments or human or predator interactions) made during monitoring activities will also be documented on established field data forms. Prior to the initial deployment of the nesting platforms in 2013, the Licensee will consult with NYSDEC and USFWS regarding the format and content of the field data forms.
- Observations and data collection will be performed through a combination of shoreline and boat surveys. The method of data collection and observation will be noted on the field data forms.
- Personnel performing field surveys will receive up to a day of training prior to each observation season and will be trained to obtain the necessary information while staying as far from observed nests as possible during surveys and to photo document the observed nesting activities.
- Throughout the duration of the monitoring activities, the Licensee will consult with NYSDEC and USFWS. Information to be provided through email, based on the following schedule, shall include:
  - One month prior to deployment of the nesting platforms:
    - Anticipated nesting platform deployment date
    - Schedule of anticipated monitoring dates
    - List of personnel to perform the monitoring

Oswegatchie River Hydroelectric Project  
Common Loon Nesting Platform Installation and Monitoring Plan  
December 2010

- Within 4 days following each monitoring event (through submittal of the field data forms):
  - Confirmation that the weekly monitoring was performed
  - Indication of any nesting activities
  - Indication of any failed nesting attempts
  - Identification of any eggs
  - Identification of any chicks
  - Indication of any predation
  - Recommendations for any modifications to monitoring activities
  - Notification of proposed removal of any nesting platforms
  - Observation of any loons on impoundment
- Within 90 days following the conclusion of the annual monitoring activities:
  - A summary of the annual observations, including number of successful and/or failed nesting efforts, number of pairs observed, number of eggs observed, and number of chicks observed
  - A map indicating the location of the nesting platforms and observed nesting activities
  - Recommendations for any modifications to monitoring activities, location of nesting platforms, and/or deployment activities

**Future Deployment and Monitoring Activities:**

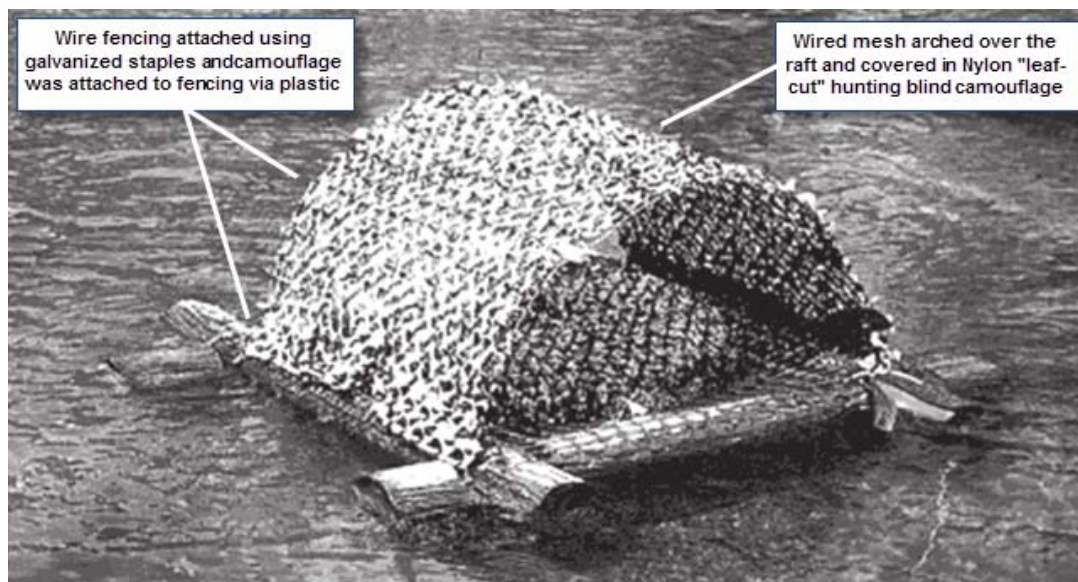
- If during the 5-year deployment period loons are observed using the nesting platforms, or if there are indications of attempted nesting efforts, the Licensee will continue to deploy the nesting platforms in consultation with the NYSDEC and USFWS.
- If during the 5-year deployment period there are no observations of loons using the nesting platforms and/or no indications of attempted nesting efforts within the impoundments, in consultation with NYSDEC and USFWS, the Licensee will discontinue deployment and monitoring efforts. However, the Licensee will make the nesting platforms available to agencies, or other interested parties, that wish to deploy and/or monitor the nesting platforms.
- If agencies, or other interested parties, document loons utilizing nesting platforms after the 5-year monitoring period, the Licensee will take responsibility in deploying the platforms annually.

**References:**

DeSorbo, C.R., J. Fair, K. Taylor, W. Hanson, D.C. Evers, H.S. Vogel, and J.H. Cooley, Jr. 2008. Guidelines for Constructing and Deploying Common Loon Nesting Rafts. *Northeastern Naturalist* 15(1):75-86.

Oswegatchie River Hydroelectric Project  
Common Loon Nesting Platform Installation and Monitoring Plan  
December 2010

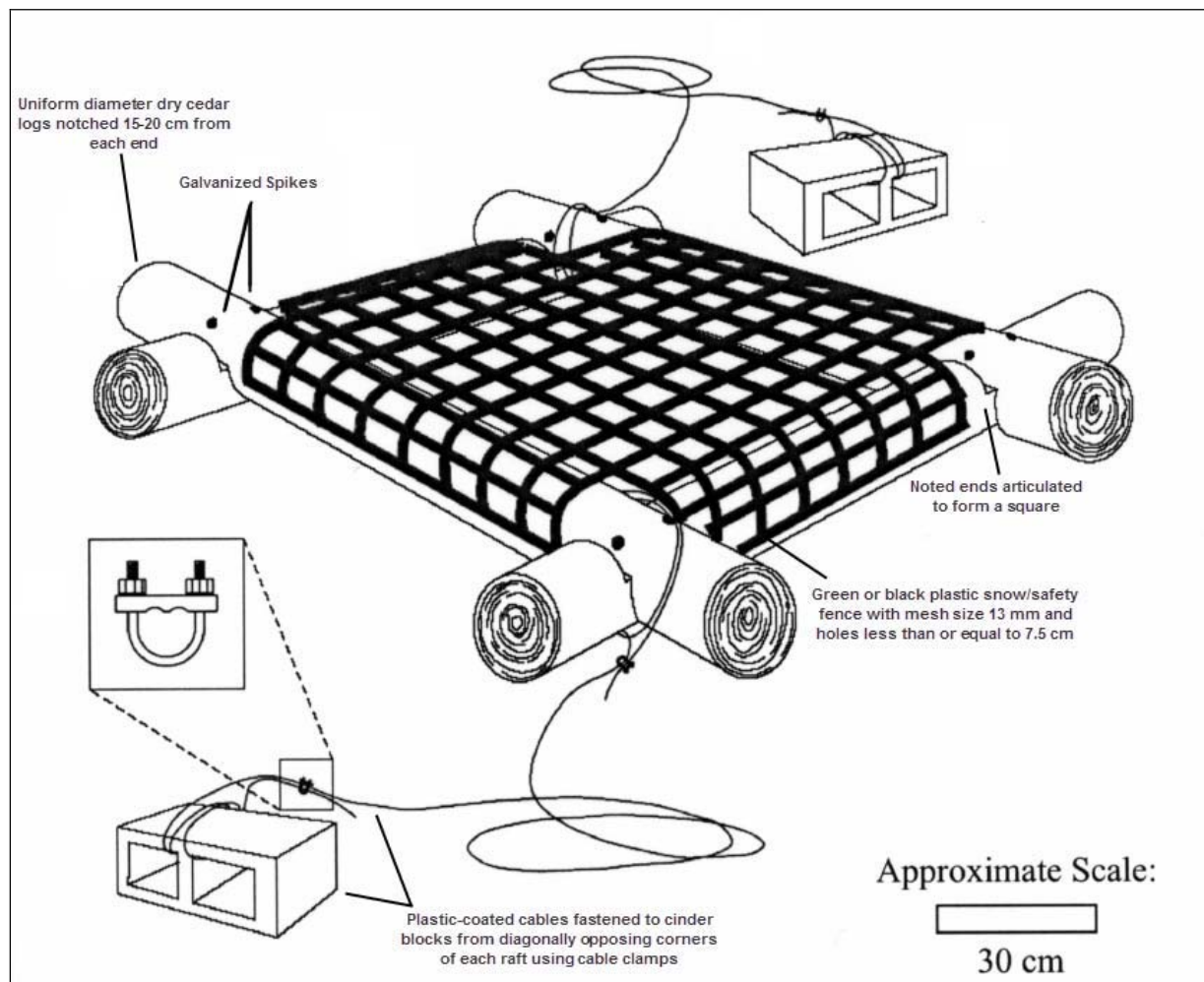
### Avian Guard Design



DeSorbo et al. 2008

Oswegatchie River Hydroelectric Project  
Common Loon Nesting Platform Installation and Monitoring Plan  
December 2010

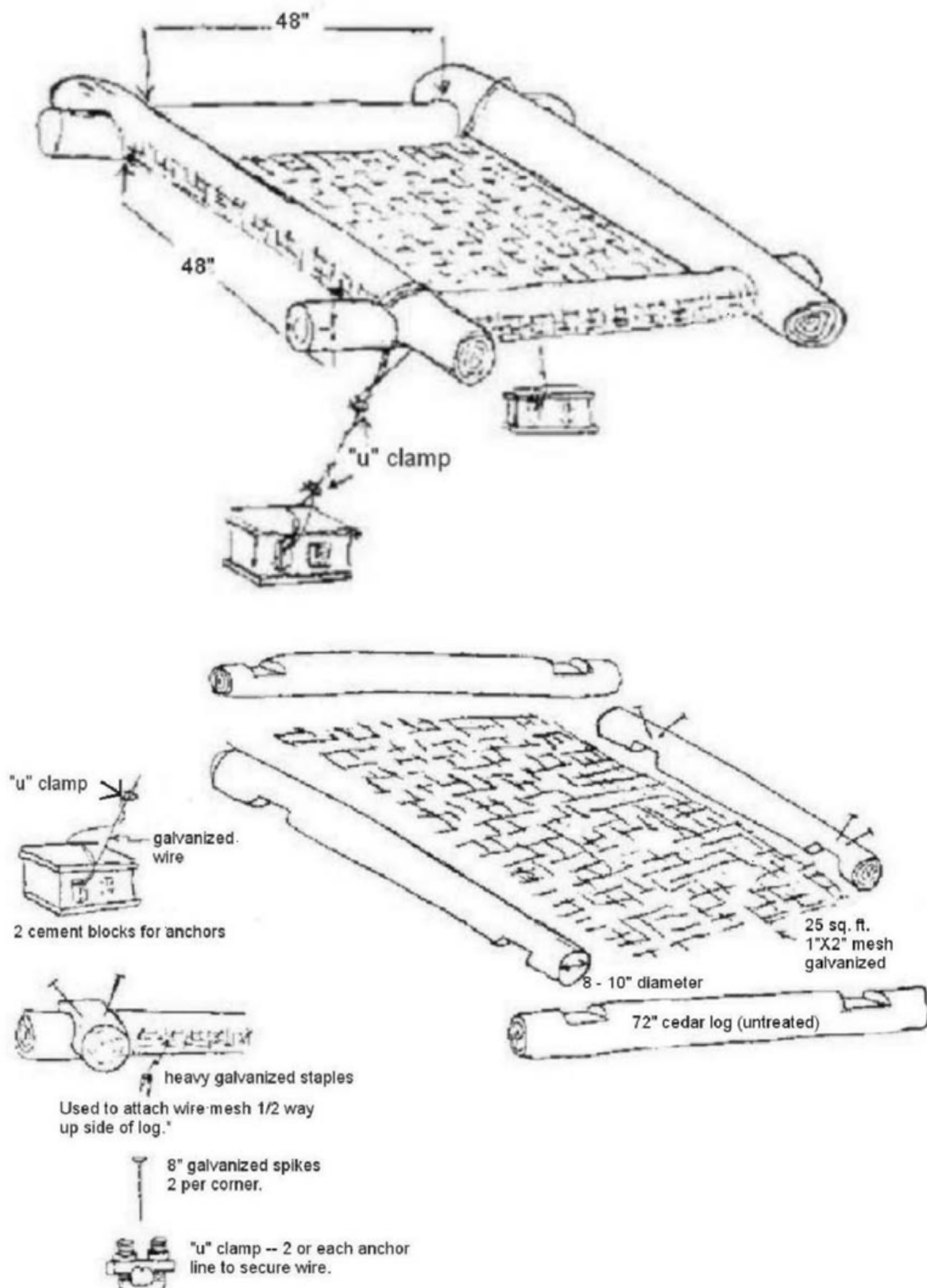
### Loon Nesting Platform Design 1



DeSorbo et al. 2008

Oswegatchie River Hydroelectric Project  
Common Loon Nesting Platform Installation and Monitoring Plan  
December 2010

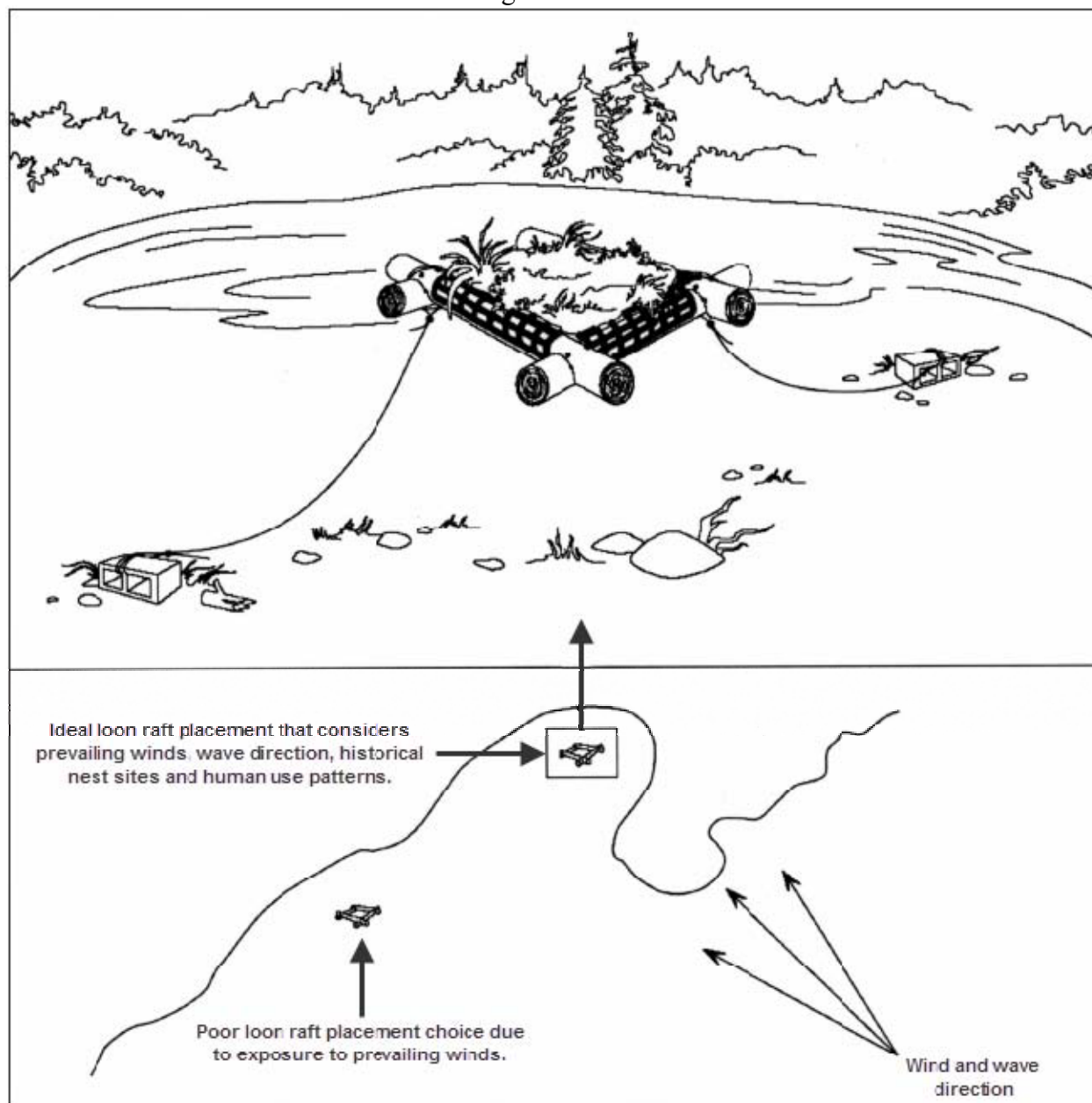
# Loon Nesting Platform Design 2





Oswegatchie River Hydroelectric Project  
Common Loon Nesting Platform Installation and Monitoring Plan  
December 2010

### Loon Nesting Platform Placement



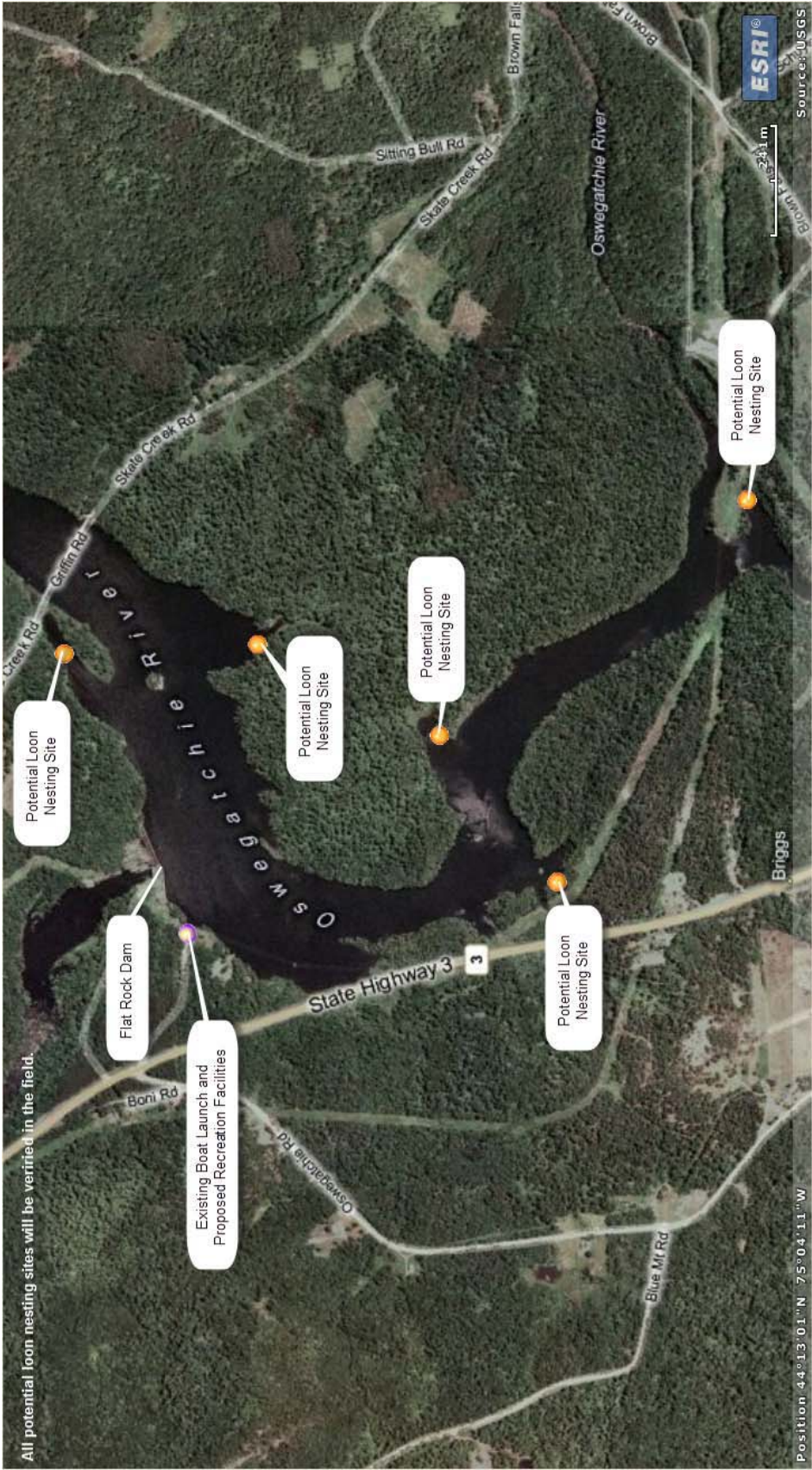
DeSorbo et al. 2008

**Browns Falls Development Loon Nesting Platform Locations**



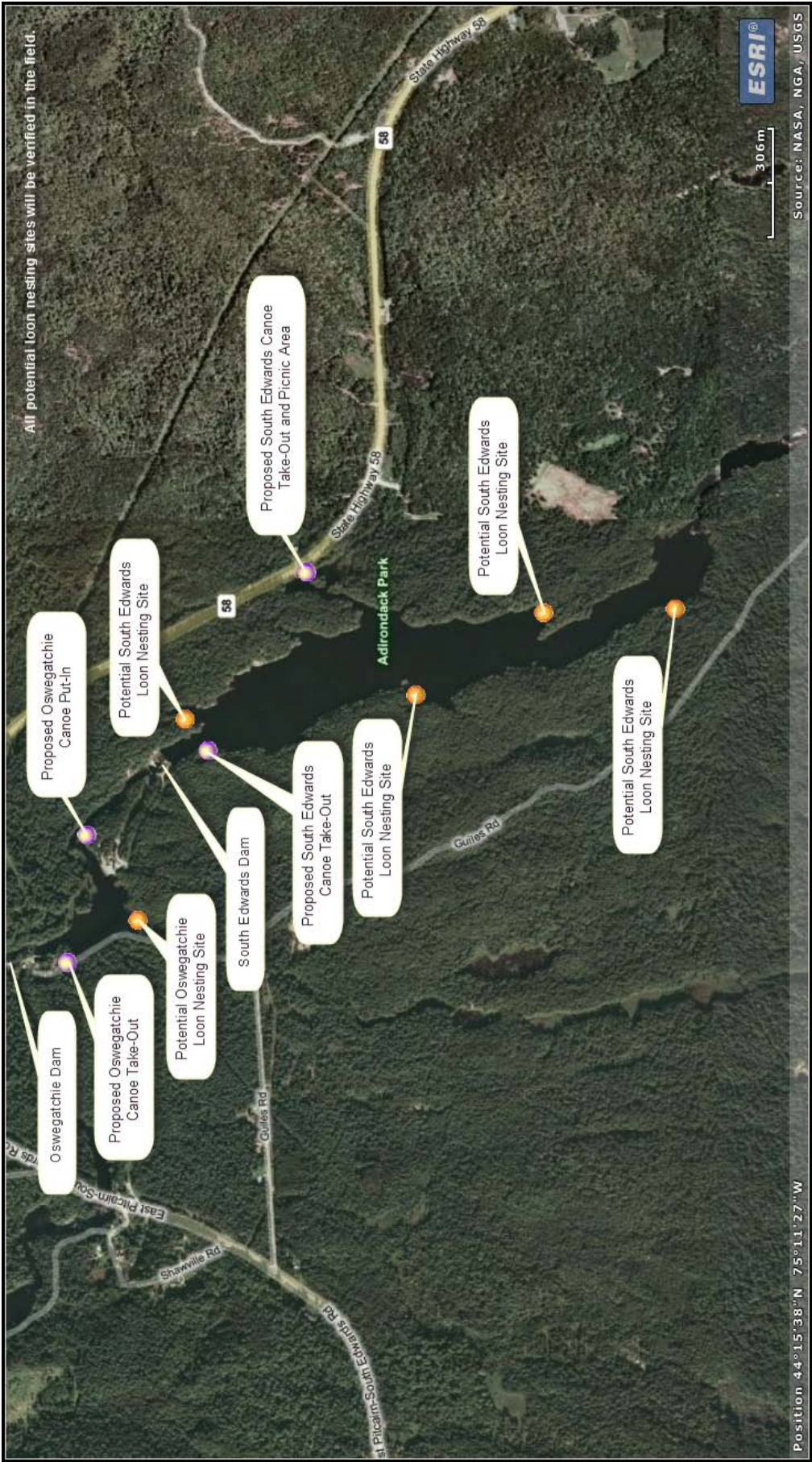


Flat Rock Development Loon Nesting Platform Locations





South Edwards and Oswegatchie Developments Loon Nesting Platform Locations



**APPENDIX B**  
**BROWNS FALLS BYPASSED REACH TROUT STOCKING AND**  
**MONITORING PLAN**

**Oswegatchie River Hydroelectric Project  
(FERC No. 2713)**

**Browns Falls Bypassed Reach Trout Stocking and Monitoring Plan**

**Purpose:**

- A collaborative Trout Stocking and Monitoring Program, to help establish a trout population in the Browns Falls bypassed reach between the Browns Falls dam and the confluence with the Browns Falls tailrace, has been developed. The Licensee, the New York State Department of Environmental Conservation (NYSDEC), the U.S. Fish and Wildlife Service (USFWS), and Trout Unlimited (TU) will attempt to establish this population. As described below, the primary activities associated with this Plan include: (1) fish stocking (performed annually for 5 years—from 2013 through 2017); (2) monitoring (a total of three fish sampling events, continuous water temperature monitoring seasonally from 2013 through 2017, and periodic water quality monitoring in conjunction with fish sampling activities); and (3) data reporting.
- The following table provides a general schedule for these activities.

<b>Activity</b>	<b>Timeframe</b>
First stocking event	Spring 2013
Second stocking event	Spring 2014
First sampling event <sup>1</sup>	Summer 2014
Third stocking event	Spring 2015
Fourth stocking event	Spring 2016
Second sampling event <sup>1</sup>	Summer 2016
Fifth (and final) stocking event	Spring 2017
Third (and final) sampling event	Summer 2018
Submit final data package	120 days following 2018 sampling event

1. Results of the sampling event will be provided to the NYSDEC, USFWS, and TU within 90 days following the sampling event.

**Stocking:**

- The Licensee will stock the Browns Falls bypassed reach annually for a total of 5 years beginning in the spring of 2013. The Browns Falls bypassed reach will be stocked with brook trout (*Salvelinus fontinalis*); however, during the course of the 5-year stocking program, the species may be modified to brown trout (*Salmo trutta*), or a combination of the two species, based on annual consultation with the NYSDEC, USFWS, and TU.
- Stocking will be performed with yearling fish (age 1+); however, during the course of the stocking program, the age of the fish may be modified based on annual consultation with the NYSDEC, USFWS, and TU.
- The appropriate targeted stocking number has been calculated at 1,300 individuals per year of yearling fish, based on the NYSDEC's *Guidelines for Stocking Trout Streams in New York State* (Engstrom-Heg 1990), which uses the general principle of Catch Rate Oriented Trout Stocking.
- Fish will be obtained from a NYSDEC-approved fish hatchery, and the Licensee will obtain a copy of the hatchery's fish health certificate prior to each stocking effort.

Oswegatchie River Hydroelectric Project  
 Browns Falls Bypassed Reach Trout Stocking and Monitoring Plan  
 December 2010

- Trout stocked in the Browns Falls bypassed reach will be placed at three separate stations (see the attached map for the location of the three stations). Station 1 will be located approximately 700 feet downstream of the Browns Falls dam; Station 2 will be located at the bridge crossing over the bypassed reach on Browns Falls Road; and Station 3 will be located downstream of the bridge, halfway between the bridge and the confluence of the bypassed reach and tailrace. Approximately one-third of the fish (433 yearlings) will be stocked at each location.
- Unless determined otherwise, in consultation with NYSDEC, USFWS, and TU, stocking activities will be performed manually by bucket.
- Stocking will occur each spring for the 5-year period on a date following ice-out and spring runoff. The exact date of stocking will be determined each year, and the Licensee will inform NYSDEC, USFWS, and TU of the date 21 days (3 weeks) prior to stocking.
- The exact day of stocking may be adjusted due to weather, river flows, or other factors beyond the Licensee's control.
- The Licensee will fin-clip the trout prior to stocking (exact method to be determined) to determine if any fish are recaptured during the monitoring events. Fin-clipping will vary to indicate annual stocking classes.

### **Monitoring and Reporting:**

- In support of the stocking and monitoring activities, the Licensee will perform continuous water temperature monitoring in the Browns Falls bypassed reach from approximately April 1 through December 1 annually for the 5-year stocking period (2013 through 2017). Continuous temperature monitors will be deployed at each of the three stocking stations. Deployment and removal of the temperature monitors will be dependent upon river flows and the presence of snow and/or ice.
- The Licensee will perform a total of three fish sampling events in support of this stocking effort. Regarding the seasonal timing of the events, depending on river flows (sampling will not be performed during spill events [i.e., greater than 30-cubic-foot-per-second flow in the bypassed reach]) and temperatures (sampling will not be performed during abnormally hot weather—to be determined in consultation with NYSDEC, USFWS, and TU), sampling will be performed between July 15 and September 15. The first event will occur in 2014, the second event will occur in 2016, and the third event will occur in 2018. The purpose of the monitoring is to determine if a trout population has become established in the bypassed reach.
- The exact date of monitoring will be determined each year, and the Licensee will inform NYSDEC, USFWS, and TU of the date 21 days (3 weeks) prior to monitoring.
- The exact day of monitoring may need to be adjusted due to weather, river flows, or other factors beyond the Licensee's control.
- Each sampling event will consist of sampling the area associated with each of the three stocking stations. Therefore, a total of three areas will be sampled during each sampling event.

Oswegatchie River Hydroelectric Project  
 Browns Falls Bypassed Reach Trout Stocking and Monitoring Plan  
 December 2010

- During each sampling event, consistent with standard sampling practices, the Licensee will collect water quality data consisting of the following parameters from each sampling area: water temperature, air temperature, pH, dissolved oxygen, and specific conductance.
- Data (sample results and water quality data) resulting from the first two sampling events will be provided to NYSDEC, USFWS, and TU within 90 days of the sampling events, and 120 days following the third sampling event.
- Following submittal of the data results, the Licensee will participate in a conference call or meeting with NYSDEC, USFWS, and TU to review the results and discuss any potential changes to the stocking program.
- The data submittal will consist of a table that presents the following information regarding the sampling event and the fish collected for each of the three sample locations:
  - Date and time of sampling
  - Name of personnel performing sampling
  - Weather conditions
  - Water quality data
  - Area(s) sampled (identified on a map)
  - Length of time of each sampling effort
  - Names of individuals who performed the sampling
  - Bullet list of sampling parameters and unit settings
  - Number of fish collected
  - Species of fish
  - Fish lengths of all trout captured to the nearest millimeter (up to 30 fish per other species)
  - Weight of all trout captured to the nearest tenth of a gram
  - Identification of fin-clipping
  - If applicable, indications of stress
- Within 120 days of completion of the 2018 sampling event, the Licensee will provide NYSDEC, USFWS, and TU with a final data package that includes the data from the three sampling events and a summary of the five stocking events.

### **Methods:**

- The fish sampling method will include the use of a Smith-Root LR-24 Backpack Electrofishing Unit (or equivalent) in combination with blocking seines so that population parameters, such as population number, survivorship, growth, and biomass (standing stock), can be estimated. The method to be used is the Seber-LeCren two-pass reduction estimate method.
- Personnel safety, data integrity, and safe handling of fish species caught will be the primary goals during sampling activities.
- All data collected will be recorded and documented using an established data sheet that includes the information provided above.



Oswegatchie River Hydroelectric Project  
Browns Falls Bypassed Reach Trout Stocking and Monitoring Plan  
December 2010

**Further Stocking Activities:**

- The Licensee will not continue stocking or monitoring beyond the 6-year period identified above. If desired, any additional future stocking activities would be performed by others.

**Cited References:**

Engstrom-Heg, R. 1990. Guidelines for Stocking Trout Streams in New York State. NYSDEC Publication. Div. Fish & Wildlife, Bureau of Fisheries. 107 pg.

**Browns Falls Development Trout Stocking Locations**



Document Content(s)

Settlement Transmittal Letter 20110218.PDF.....1-5

Final Offer of Settlement 20110218 (for distribution).PDF.....6-66