

United States of America
Before The Federal Energy Regulatory Commission

NEW ENGLAND POWER COMPANY

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Deerfield River Project
L.P. No. 2323-012

This Offer of Settlement (Settlement or Agreement) is entered into voluntarily by and between New England Power Company (NEP, Licensee and Applicant for a New License for Project No. 2323, described below), the United States Environmental Protection Agency (EPA), the National Park Service (NPS), the United States Fish and Wildlife Service (USFWS) the Massachusetts Division of Fisheries & Wildlife (MDFW), (collectively, the Resource Agencies), American Rivers, Inc. (ARI), American Whitewater Association (AWA), The Appalachian Mountain Club (AMC), The Conservation Law Foundation (CLF), The Deerfield River Compact, The Deerfield River Watershed Association, New England FLOW (FLOW), and Trout Unlimited (TU), (collectively, the Intervenor), pursuant to Rule 602 of The Federal Energy Regulatory Commission (FERC) [18 CFR 385.602]. NEP, the Resource Agencies, and the Intervenor are collectively referred to herein as the Parties.

This Offer of Settlement provides the terms and conditions for the resolution of the fisheries, fish passage, wildlife, water quality, lands management and control, recreation and aesthetics issues raised by the Parties regarding the issuance

of a new license for the Deerfield River Project, these being all the issues presently identified by the Parties.

I. **Background**

The Deerfield River is located in northwestern Massachusetts and southern Vermont. NEP is the licensee and applicant for a new license for the Deerfield River Hydroelectric Project, L.P. No. 2323, which consists of eight developments listed below:

<u>Development</u>	<u>Description</u>	<u>Location</u>
Somerset	storage reservoir	Vermont
Searsburg	5 MW	Vermont
Harriman	43 MW storage reservoir	Vermont
Sherman	7 MW	Massachusetts (backwater into Vermont)
No. 5	16 MW	Massachusetts
No. 4	6 MW	Massachusetts
No. 3	6 MW	Massachusetts
No. 2	6 MW	Massachusetts

The original license for the Project expired on December 31, 1993, and the Project has been subsequently issued an Annual License pursuant to 16 U.S.C. §808(a). NEP

filed for a new license in December of 1991. Subsequent to that filing, FERC requested additional information from NEP in August of 1992. FERC's request was modified and clarified in January of 1993. NEP filed responses to the requests for additional information on October 1, 1993 and January 10, 1994. On March 9, 1994, FERC noticed its determination that the Application was ready for environmental analysis. The Parties subsequently requested an extension of time to respond to that notice until September 6, 1994, in order to allow for the negotiations that produced this Settlement to continue. On August 30, 1994 this period was further extended to October 6, 1994. The Parties have met numerous times since early 1993 to negotiate this Settlement.

II. General Provisions

A. The Parties have entered into this Settlement with the intent that all issues identified by the Parties to date associated with issuance of a new license for the Project involving fisheries, fish passage, wildlife, water quality, lands management and control, recreation and aesthetics are resolved to the satisfaction of the Parties.

B. NEP agrees to implement the various obligations and requirements set forth herein. The Resource Agencies and the Intervenor agree to support a new 40 year license for the Project incorporating and implementing the provisions contained herein. This support shall include reasonable efforts to expedite the National Environmental Policy Act (NEPA) process. For those issues addressed herein, the

Parties agree not to propose, support, or otherwise communicate to FERC or any other Resource Agency with jurisdiction directly related to the relicensing process any comments or license conditions other than ones consistent with the terms of this Agreement. However, this Agreement shall not be interpreted to restrict any Party's participation or comments in future relicensing of this Project. Further, this section shall not be read to predetermine the outcome of the NEPA analysis. If such NEPA analysis leads to addition of any license conditions inconsistent with those contained herein, the Parties recognize that such addition would trigger the rights of the Parties to withdraw from the Settlement pursuant to Paragraph VII.A.

C. The Parties agree that this Settlement fairly and appropriately balances the environmental, recreational, fishery, energy and other uses and interests served by the Deerfield River. The Parties further agree that this balance is specific to the Deerfield River Project. No Party shall be deemed, by virtue of participation in this Settlement, to have established precedent, or admitted or consented to any approach, methodology, or principle except as expressly provided for herein. In the event that this Settlement is approved by the FERC, such approval shall not be deemed precedential or controlling regarding any particular issue or contention in any other proceeding.

D. Nothing in this Settlement shall preclude the Resource Agencies from complying with their obligations under the National Environmental Policy Act, the Clean Water Act, the Endangered Species Act, the Federal Power Act, the Fish and

Wildlife Coordination Act or any other applicable state or federal laws. However, by entering into this Agreement the Resource Agencies represent that they believe their statutory obligations are, or can be, met consistent with this Agreement.

E. This Settlement shall become effective upon the later of: a) issuance of a new license, consistent with this Settlement, by FERC; or b) the expiration of any appeal period for §401 Water Quality Certifications issued by Vermont and Massachusetts. If Water Quality Certification is issued by either state that results in license terms inconsistent with the terms of the Settlement, any Party may withdraw pursuant to Section VII of this Agreement. The Settlement shall remain in effect for the term of the new license and for any annual license issued subsequent thereto subject to Authority reserved by FERC in the new license to require modifications.

F. The Parties have entered into the negotiations and discussions leading to this Settlement with the explicit understanding that all offers of settlement and the discussions relating thereto are privileged, shall not prejudice the position of any Party or participant taking part in such discussions and negotiations, and are not to be used in any manner in connection with these or any other proceedings.

G. The Settlement shall apply to, and be binding on, the Parties and their successors and assigns, but only with regard to the above-captioned proceeding and then only if the Settlement is made effective as provided herein. No change in corporate status of NEP shall in any way alter NEP's responsibilities under the Settlement. Each signatory to the Settlement certifies that he or she is authorized to execute the Settlement and legally bind the party he or she represents.

H. By entering into this Settlement, the Intervenor and Resource Agencies shall not be considered to have accepted any legal liability for the operation of the NEP Project.

I. Nothing in this Settlement shall be construed as binding the USFWS or NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Settlement for the fiscal year, or to involve the USFWS or NPS in any contract or other obligation for the future expenditure of money in excess of such appropriations or allocations.

J. With respect to EPA, nothing in this Agreement, including without limitation Sections II.B and D., shall be interpreted to preclude or otherwise limit EPA from complying with its obligations under the Clean Water Act, Clean Air Act, and National Environmental Policy Act, or other federal statutes. EPA support for the terms of this Agreement is based on its knowledge and understanding of the facts at the time of this Agreement's execution. Nothing herein shall preclude EPA from fully and objectively considering all public comments received in any regulatory process related to the Project, from conducting an independent review of the Project under applicable federal statutes, or from providing comments to FERC.

III. Fisheries and Wildlife

A. NEP agrees to provide minimum flows as follows to protect and enhance fishery and aquatic resources.

River Reach	Flow	Other Conditions
Below Somerset Dam	30 CFS from Oct. 1 to Dec. 15, 48 . CFS from Dec. 16 to Feb. 28, 30 CFS from Mar. 1 to Apr. 30, 12 CFS from May 1 to Sept. 30	Minimum flow guaranteed from storage - From May 1 to July 31 flow may be reduced to 9 CFS if necessary to maintain reservoir elevations
Below Searsburg Dam	The lesser of 35 CFS or inflow from June 1 to Sept. 30, 55 CFS or inflow from Oct. 1 to May 31	
Below Harriman Dam	70 CFS from October 1 to June 30 57 CFS from July 1 to September 30	Minimum flow guaranteed from storage
Below No. 5 Dam	The lesser of 73 CFS or inflow	Inflow will not be less than the 57 CFS guaranteed at Harriman
Below Fife Brook Reach	125 CFS	Minimum flow guaranteed from storage
Below No. 4 Dam	The lesser of 100 CFS or inflow from October 1 to May 31; The lesser of 125 CFS or inflow from June 1 to September 30	
Below No. 3 Dam	The lesser of 100 CFS or inflow	
Below No. 2 Dam	200 CFS	Minimum flow guaranteed from storage

B. NEP agrees to operate Harriman and Somerset reservoirs as described herein to protect the resource values provided by the reservoirs.

- 1) The Somerset reservoir will be managed by NEP to maintain a stable reservoir elevation to facilitate loon nesting during the period of May 1 through July 31 in each year. During this period NEP will maintain the reservoir elevation stable within a range of +/- 1 foot.

- 2) NEP will manage the Harriman reservoir as follows to support rainbow smelt and small mouth bass spawning and early life stages. The reservoir water level will be stable or rising during the period from May 1 through June 15 each year. From June 16 through July 15 the reservoir elevation will drop no more than 1 foot per day.

C. It is expected that the future operation of Deerfield No. 2 will significantly reduce the frequency and effects of transitions from minimum flow to generation flows. (The "Expected Operation" is projected to average no more than 2 transitions per day and not more than 10 per week.) The Parties agree that subject to verification of this operation and its effects, no specific peaking limitations or restrictions are warranted at this time. NEP agrees to maintain release data for the No. 2 Station for a period of 36 months after issuance of a new License and will make this data available to the Parties on an annual basis. The Parties agree to cooperatively review and discuss this data, and consider whether any changes in Station operation are necessary. The Parties agree to support the inclusion of a license article allowing for the reconsideration of Station No. 2 operations if this data indicates that the Expected Operation is not occurring.

D. NEP agrees to submit, within one year of the issuance of a New License, a plan to FERC proposing means to monitor, report and verify the minimum flows and reservoir operations required by this Agreement. Said plan shall be

prepared in consultation with the Resource Agencies. NEP agrees to implement the plan within two years of license issuance unless otherwise directed by FERC.

E. Emergency conditions beyond the control of NEP including but not limited to anticipation of or occurrence of high natural precipitation, or other natural conditions leading to extreme runoff events; flood storage requirements; ice conditions; equipment failure; or electrical emergencies in which the operational restrictions set out herein will or are reasonably likely to result in interruption of service to electrical customers; may occasionally require NEP to make variations from the operational restrictions set out herein when compliance would be impossible, or inconsistent with the prudent and safe operation of the Project. NEP will provide notice of such variation to USFWS and the Vermont Agency of Natural Resources (VANR) or the Massachusetts Department of Environmental Protection (MDEP), whichever is affected, within one business day of NEP's knowledge of such an event. Such variations shall not be deemed in violation of, or contrary to this Settlement Agreement.

F. NEP has provided plans for downstream fish passage facilities at Station Nos. 2, 3, and 4. NEP agrees to install these facilities in accordance with these plans (Plan nos. H-64758-P, H64757-P, H64755-P) as modified by the comments of the USFWS and said facilities shall be operational within 2 construction seasons of issuance of a New License. Prior to operation, NEP will provide a plan for evaluating the effectiveness of these facilities for review and comment by the USFWS and MDFW and approval by FERC.

NEP agrees to provide upstream passage at Station No. 2 for adult Atlantic salmon returning to the Deerfield River. Upstream passage will be implemented via a phased approach, determined by the number of adult Atlantic salmon returning to the Deerfield River. Adult Atlantic salmon will be radio-tagged and released at the Holyoke Dam Fishway and monitored at stations along the Deerfield River, in accordance with a plan to be developed by NEP and approved by the Connecticut River Atlantic Salmon Commission (CRASC) technical committee.

Radio tagging will begin in the first migration season after issuance of the new license and continue annually until either: 1) at least 12 adult Atlantic Salmon have been verified in the Deerfield River below Station No. 2 for two consecutive years and during those years an interim fish trapping system has successfully captured Atlantic salmon in the Deerfield River in a timely fashion with as little stress to the salmon as possible and with survival rates as good as those fish captured at the Holyoke fish lift; 2) at least 4 adult Atlantic Salmon have been verified in the Deerfield River below Station No.2 for two consecutive years and no interim trapping system was available or successful in recapturing fish during the monitoring period; or 3) CRASC determines that radio-tagging is no longer acceptable. Upon reaching the number of returning adult salmon under the conditions specified in 1 or 2 above, NEP will install a permanent upstream trap facility within two construction seasons in accordance with plans provided (Plan No. H-64756-P) as modified by comments of the USFWS, or implement an alternative system mutually agreed to by NEP, USFWS and MDFW.

Radio-tagging may also be discontinued if a ratio of salmon returning to the Deerfield River to all salmon released from Holyoke is mutually agreed to by NEP, MDFW and USFWS. If such a ratio is agreed to, it will be used to calculate the number of adult salmon returning to the Deerfield River for the purposes of determining if the numbers specified in 1 or 2 above have been achieved.

The Parties agree to support a license article providing for the retention of USFWS authority to prescribe upstream fish passage construction, as described in plans (Plan No. H-64756-P) as modified by comments of the USFWS, or some alternate upstream passage system agreed to by NEP, MDFW and USFWS, in the event that the radio-tagging is discontinued and no ratio of Holyoke released fish to Deerfield River fish has been agreed to.

G. NEP agrees to implement a program of wildlife enhancements as detailed in response to Additional Information Request 19, filed on October 1, 1993, to protect and enhance the wildlife resources of the Project.

IV. Recreation and Aesthetic Issues

A. NEP has proposed a comprehensive Recreational Plan which has been submitted to the FERC on October 1, 1993. NEP agrees to implement the plan, and install, operate and maintain the recreational facilities, existing and proposed, as described in this Plan and in accordance with the schedule provided therein. NEP agrees to provide free access with no charge or fees to the water and undeveloped Project land. NEP may charge reasonable user fees to recover the actual costs of

providing and operating either its developed public recreation facilities or other facilities that may be provided in the future which do not provide primary or sole direct access to the water or undeveloped Project lands.

B. Boating Flows

- 1) NEP agrees to implement a schedule of whitewater releases as specified in Appendix A to provide for whitewater recreational opportunities at the Project.
- 2) NEP agrees to meet with representatives of FLOW or its successors and other interested members of the public before January 1 of each year to cooperatively develop release schedules for the coming summer. The proposed annual schedule will be issued for publication in January of each year. In order to account for unforeseen maintenance periods or other special scheduling requests, the final annual schedule will be issued by April 1 of each year following further consultation with FLOW and other interested members of the public. The Parties agree to minimize, to the extent possible, changes in the schedule set on January 1 of each year. The allocation of releases for each month set out in Appendix A may be adjusted by mutual consent of FLOW and NEP after allowing for comment by other interested members of the public provided the total number of annual releases remains

the same. NEP and FLOW agree to work cooperatively to disseminate the release schedule to the public.

- 3) NEP agrees to continue to provide a river flow information phone providing recorded river flow information. The river flow information phone shall be updated periodically as practicable, but at a minimum, daily, to provide information on current conditions and the next day's anticipated release schedule. The river flow information phone shall provide estimated flows below Somerset Dam, Deerfield No. 5 Dam, Fife Brook Dam, and Deerfield No. 2 Dam and inflow at Sherman Reservoir and No. 4 impoundment. Information on current and expected spillage amounts, will be provided for each day at all dams except Sherman and Deerfield No. 3, regardless of conditions, but NEP may at its discretion avoid providing inaccurate estimates or forecasts regarding natural spillage.
- 4) The Parties recognize that natural low, or high runoff conditions, mechanical failure, or other emergencies may prevent strict adherence to the annual schedule. In the event that natural low flow conditions restrict NEP from providing electric generation and whitewater releases according to the schedule, NEP will notify and meet with FLOW and the other

interested members of the public to cooperatively arrive at a reduced schedule that takes natural conditions into account. NEP will notify the public of the change in its release schedule through the River Information Phone as soon as possible. Scheduled releases will be canceled because of power generation needs only when performing the scheduled release will, or is reasonably likely to result in, interruption of service to electricity customers. In the event scheduled releases are canceled, they will be included as additional releases over the next two year's schedules.

- 5) NEP agrees to implement the new and enhanced recreational facilities of particular importance to whitewater recreation as detailed in the recreation plans filed on October 1, 1993, in response to AIR No. 24.

C. Enhancement Fund

NEP agrees that within sixty days of the issuance of a new license consistent with this Settlement, NEP will establish the Deerfield River Basin Environmental Enhancement Trust Fund in the amount of \$100,000 (1994\$) to finance watershed conservation, development of low impact recreational and educational projects and facilities, and planning, design, maintenance and monitoring of such facilities and projects. The Fund will not be used to carry out the various obligations set forth in the other provisions of this Agreement. The Fund will be

disbursed on four year cycles. Over the first five cycles, the funds to be disbursed will be limited to 70% of the interest accrued over the previous four years, the remaining interest to be added to the principal. The last four cycles will be limited to all of the interest accrued in the preceding four years plus a portion of the principal, to be 20%, 25%, 33%, and 50% of the remaining principal for each of the four distribution cycles respectively. The last distribution cycle will be for all remaining funds in the account.

The Fund will be administered by a three member committee, which shall determine the investment strategy for the fund and the appropriate distribution of available funds for each year. The committee will be comprised of a representative of NEP, a designee of the Secretary of the State of Vermont Agency of Natural Resources and a designee of the Secretary of the Commonwealth of Massachusetts Executive Office of Environmental Affairs. Funding decisions will be made by unanimous vote of the three member committee. The committee will also be charged with approving additional contributions to the fund when and if they become available through gift, grant, or other means.

By the end of October of each year preceding a distribution cycle, the committee will submit to FERC for approval a ranked list of projects selected for funding by the committee and an accompanying accounting plan. One or more projects may be funded in any distribution cycle. Upon the completion or abandonment of any funded project, and in no case later than the next distribution

cycle, the committee will submit to FERC an accounting specifying the actual use of the awarded funds over the course of the project.

Eligible Fund recipients include nonprofit organizations, educational institutions and units of government within Vermont and Massachusetts. In general, funds will be available on a 50% matching basis; however, the Committee is authorized to waive the matching requirement upon an applicant's showing of need. Projects will be selected through a competitive grant application basis.

To be eligible for funding, a proposed project would be required to provide clear public benefit and contribute to the goals of enhancing low impact recreational, environmental education or environmental protection opportunities directly related to the Deerfield River watershed. Projects must be located within the Deerfield River Basin or in towns with some portion falling within the basin. In the later case, projects must be directly tied to the basin, e.g., a trail spur originating outside the basin that connects with a trail network within the basin. Projects must be consistent with those plans accepted by the FERC as Comprehensive Plans for the Deerfield River. Funds may be used for outdoor educational programs, including curriculum development and travel for students, interpretative materials and signs.

V. Project Lands

A. NEP agrees to grant term conservation easements to qualified government or nongovernment land management organizations to provide for the

continued preservation in a natural state of the lands within the Project owned by NEP in fee, and certain other lands owned by NEP in fee (Non-project Lands) downriver of Fife Brook Dam and the No. 2 development and along the river corridor. The grant of conservation easements on Non-project Lands shall be conditioned on FERC's approval that the Non-project Lands be added to the Project Lands and be treated as Land in Utility Use for accounting purposes. The intent of the conservation easements is to protect the scenic, forestry and natural resources of the lands from uses which would conflict with the preservation of these resources. No uses will be made of the land subject to the conservation restriction that are inconsistent with its intent, except as otherwise provided herein. The restrictions will allow for continued use of the property for forestry, educational, non-commercial recreation, open space and electric transmission and generation purposes. Subdivision of the property will not be allowed except when necessary to carry out one of the aforementioned purposes and only when consistent with the intent of the easements, including (1) maintaining forestry management units that maintain the potential and current productivity of the lands for commercial forestry and (2) preventing the fragmentation of wildlife habitat. The lands subject to this section are approximately as shown on a map attached as Appendix B. The holders of the conservation easements will be selected by NEP, CLF and AMC, and each party may in its sole discretion withhold its approval of said selection. The holders of the conservation easements shall not transfer the easements without the consent of NEP, CLF and AMC and each party may in its sole discretion withhold its approval of said transfer. Said conservation easements will run for the

term of the new license and shall not be subordinated to any mortgage, lien, or similar encumbrance except said easements shall be subject to the terms of the General and Refunding Mortgage Indenture and Deed of Trust between New England Power Company and the New England Merchants National Bank dated January 1, 1977, as supplemented from time to time (the G&R Indenture). Said easements shall be subject to existing rights of third parties, if any. NEP agrees to continue the restrictions contained in the conservation easements during any annual licenses issued subsequent to the expiration of the new license and to renew the conservation easements for the term of the license in subsequent relicensing proceedings provided that, and to the extent that, the Project is relicensed under terms and conditions not inconsistent with the conservation easements and such that the Project continues to be an economically beneficial source of power relative to other available resources. The Parties agree that, in future relicensing proceedings, renewal of the conservation easements will be considered as proposed enhancement and not as past mitigation.

B. NEP agrees to grant a term conservation easement to a qualified government or nongovernment land management organization for the lands within the Bear Swamp Project, L.P. No. 2669 for the remaining term of the Bear Swamp License. Said conservation easement will be similar in form and intent to those described in Section V.A above but shall end absolutely at the expiration of the current license for the Bear Swamp Project, and shall be subject to the G&R Indenture and existing rights of third parties, if any. The Conservation Easements granted under this paragraph shall not be subject to the provisions of Section V.D, below. The lands

subject to this section are approximately as shown on a map attached as Appendix B.

C. NEP agrees to reimburse the easement holders' reasonable costs for monitoring and enforcing the terms of the conservation easement.

D. NEP agrees to grant the holders of the conservation easements described in Section V.A, an option to purchase at the then fair market value (but in no case an amount less than the original acquisition cost) the lands subject to the easement which are not required for electrical generation and transmission purposes, then existing, approved or with regulatory approvals pending. Said option is to be exercisable if the conservation easements are not renewed at the termination of the new license. This option to buy shall be subject to the G&R Indenture and receipt of all regulatory approvals. The option shall become exercisable upon the termination of the conservation easements and for six months thereafter, which may be extended by mutual agreement for up to two years upon a demonstration of a good faith effort to bring the transaction to a timely completion.

E. NEP agrees to conduct its timber management programs in accordance with the guidelines attached as Appendix C and with the following goals: the protection of riparian zones along rivers and lakes; protection of visual quality within important public viewsheds and along trail corridors; limited use of clearcutting; minimizing interference with low impact recreational use and enjoyment; and the preservation of wildlife habitat.

VI. Decommissioning

A. NEP acknowledges its responsibility to plan for and seek to collect funds in anticipation of the proper future management of the Project upon retirement from power production. In fulfillment of its responsibility NEP agrees to:

- 1) within five years after issuance of a new license, complete a study in consultation with the Parties and FERC to identify and estimate the cost of various options for retirement of the Project in the event of (a) a surrender or implied surrender of the License, (b) a denial by the FERC of a subsequent new License, or (c) permanent nonpower operation or (d) partial or complete removal of the Project. The project retirement options will be developed in conjunction with an independent licensed professional engineer approved by FERC or its successor.**
- 2) submit said study in a timely fashion to FERC and the Parties for comment and with approval of FERC select the most appropriate likely option for eventual retirement (the "Project Retirement Plan").**
- 3) In its first rate filing after submitting the study to FERC, and in subsequent rate filings if the initial request is denied, seek to recover in its wholesale rates appropriate amounts during the remaining license term to accumulate by the end of the**

license term, funds sufficient to support the Project Retirement Plan.

The implementation of the Project Retirement Plan would be subject to review and approval by FERC or its successor, or if no longer subject to federal jurisdiction, appropriate state authorities, and could include dam removal, if found to be the preferred course of action.

B. Funds collected by NEP for the Project Retirement Plan will be handled similarly to other Project depreciation reserves. NEP will file with FERC an annual certification of financial capability demonstrating that NEP has a tangible net worth at least three times the estimated cost of the Project Retirement Plan. If NEP is unable to provide this certification of financial capability NEP will within six months either (a) create a segregated trust fund, into which the full amount of funds previously and subsequently collected to support the Project Retirement Plan would be deposited; or (b) purchase insurance, post a bond, or provide other means previously approved by FERC ensuring that the full amount of funds collected to implement the Project Retirement Plan will be available upon the expiration of the license.

VII. Approval of Settlement; Dispute Resolution

A. The Parties have entered into and jointly submit this Settlement with the express condition that FERC approves and accepts all provisions herein and issues a new project license consistent with the terms of the Settlement. In the event that

FERC changes, conditions or modifies any provision contained herein in its order issuing a new license, whether through its own action or through incorporation of conditions of a §401 Water Quality Certification, the Offer of Settlement shall be considered modified to conform to the FERC order unless any Party to the Settlement within 30 days of FERC's action provides written notice by certified mail to the other Parties that it is withdrawing from the Settlement because of the modification, change or condition. Upon such notification, the Settlement shall be deemed void and withdrawn. In the event that the Offer of Settlement is withdrawn, it shall not constitute a part of the record of this proceeding in either the Massachusetts §401 Water Quality Certificate Proceeding, or the Vermont §401 Water Quality Certificate Proceeding.

In the event that FERC issues a final order that does not include conditions consistent with Sections IV.C (Enhancement Fund) and V. (Project Lands) of this Settlement and regardless of whether this Settlement is withdrawn by a party other than NEP, NEP agrees that it will comply with and implement the terms of Sections IV.C and V as long as the Project receives a new license with operational terms and conditions and financial impacts consistent with the Settlement as filed.

B. Dispute Resolution

In the event that any dispute arises over compliance with the terms and conditions of this Settlement, the Parties agree to engage in good faith negotiations

for a period of at least 60 days, if necessary, in an effort to resolve the dispute. A minimum of two meetings shall be held to attempt to resolve the dispute during the 60-day period, if necessary. In the event that resolution cannot be reached within the 60-day negotiating period, the dispute may be referred to FERC pursuant to FERC's Rules of Practice and Procedure (18 CFR 385, et. seq.).

Notwithstanding any other provision of this Settlement, any Party may seek relief in any appropriate forum for noncompliance with this Settlement by any Party hereto.

C. Use of Reopener Clauses in the New License

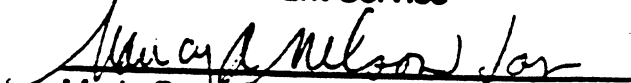
This Agreement is not intended to limit or restrict any Party's authority to seek different or modified license conditions through a license reopener. Before any Party invokes any reopener clause, the Party shall request all Parties to commence negotiations for a period of at least 90 days to resolve the issue, and to agree to modify this Agreement accordingly, if necessary.

Entered into as of this day, October 5, 1994.

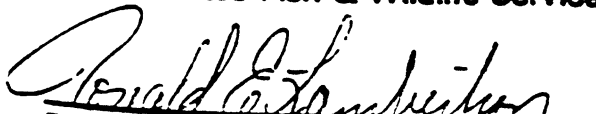
New England Power Company


John Rowe, Chairman


The National Park Service


Marie Rust, Regional Director,
North Atlantic Region

United States Fish & Wildlife Service


Ronald E. Lambertson,
Regional Director, Northeast Region

Massachusetts Division of Fisheries and
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Wayne F. MacCallum, Director

American Rivers, Inc.

Margaret Bowman
Margaret Bowman, Esq.

American Whitewater Affiliation

Thomas J. Christopher
Thomas J. Christopher, Director

The Appalachian Mountain Club

Andrew J. Falender
Andrew J. Falender, Executive Director

Conservation Law Foundation

Douglas I. Foy
Douglas I. Foy, Executive Director

The Deerfield River Compact

William Lattrell
William Lattrell, Chairman

The Deerfield River Watershed Association

William Lattrell
William Lattrell, President

New England FLOW

Richard L. Hudson
Richard L. Hudson, Director

Trout Unlimited

Charles F. Gauvin
Charles F. Gauvin, President and Chief Executive Officer

The United States Environmental Protection Agency

John DeVillars
John DeVillars, Regional Administrator, EPA - New England

American Rivers, Inc.

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The Deerfield River Watershed Association

William Lattrell, President

Trout Unlimited

Charles F. Gauvin, President and Chief Executive Officer

Accord:

**Attorney General of the
Commonwealth of Massachusetts**

**The Massachusetts Executive Office of
Environmental Affairs**

**Appendix A
Whitewater Releases**

1. 50 weekend and 56 weekday releases annually from Fife Brook Dam in Florida, Massachusetts during the recreational boating season, April 1 through October 31, according to the monthly allocation specified below.

April: 3 weeks of Wednesday through Sunday releases

May: 2 weeks of Wednesday through Sunday releases, plus 2 weeks of Saturday and Sunday releases.

June: 2 weeks of Wednesday through Sunday releases, plus 2 weeks of Saturday and Sunday releases.

July: 3 weeks of Wednesday through Sunday releases, plus 1 week of Saturday and Sunday releases.

August: 4 weeks of Thursday through Sunday releases.

September: 3 weeks of Thursday through Sunday releases.

October: 3 weeks of Wednesday through Sunday releases.

Holidays: May be substituted for weekend days upon agreement before April 1 of each year.

2. 26 weekend or holiday, and 6 Friday releases annually from the Deerfield #5 Dam into the Deerfield #5 Bypass during the recreational boating season, April 1 through October 31 according to the following monthly schedule:

April: No scheduled releases

May: 2 weekend days only

June: 5 weekend days and 2 Fridays

July: 6 weekend days and 2 Fridays

August: 7 weekend days and 2 Fridays

September: 4 weekend days only

October: 2 weekend days only

To the extent possible, each annual No. 5 Dam release schedule will minimize the number of "Friday-Saturday-Sunday" or "Saturday-Sunday-Monday(holiday)" occurrences.

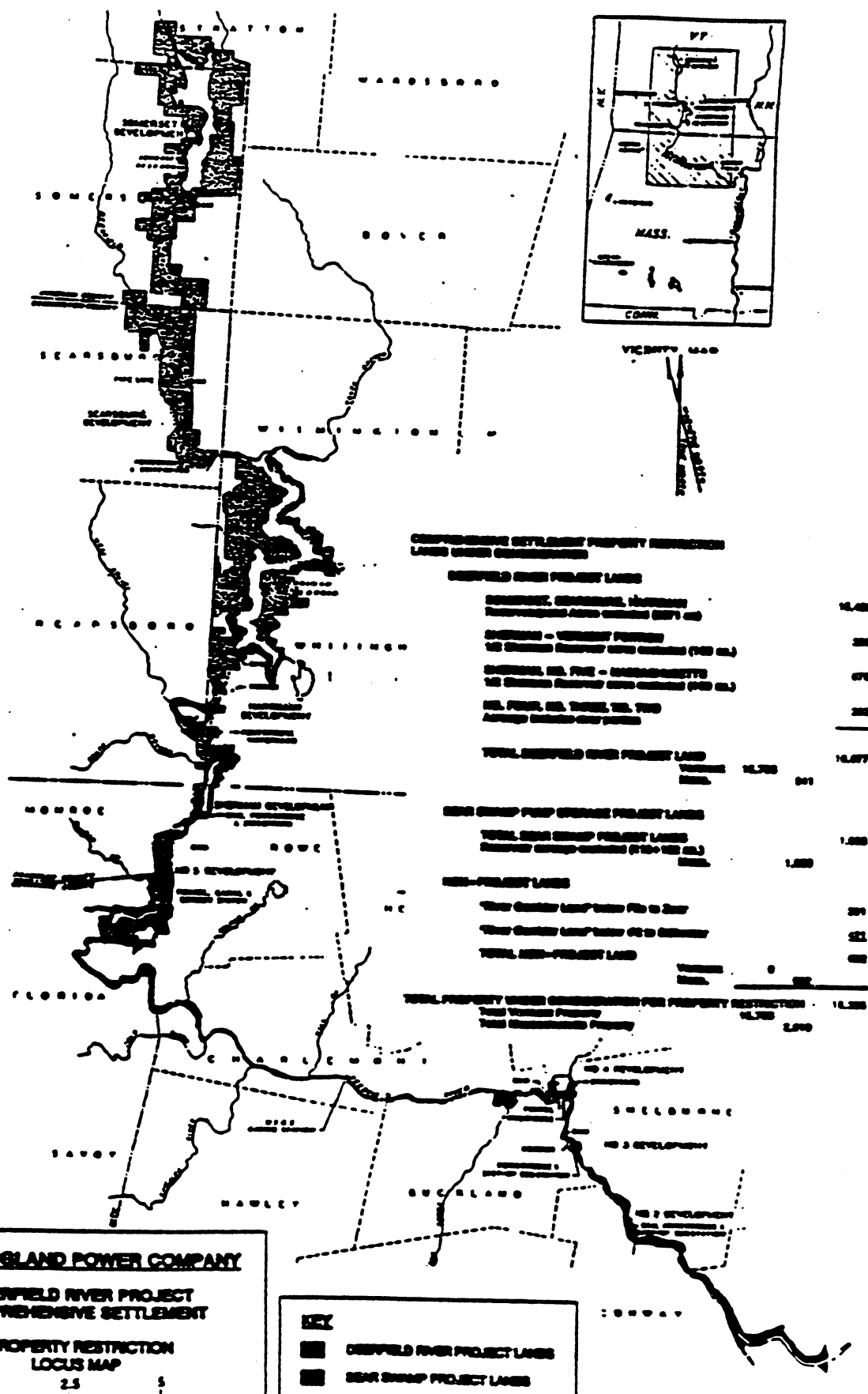
3. Water releases on each scheduled day shall be for the following durations:

- a. On the Fife Brook section, releases shall be continuous for at least three hours starting any time between the hours of 9:30 a.m. and 12:00 p.m.
- b. On the Deerfield #5 Bypass, Friday releases shall be continuous for at least four hours starting at 11:00 a.m. Saturday releases shall be continuous for at least five hours starting at 10:00 a.m. Sunday releases shall be continuous for at least four hours starting at 10:00 a.m.

4. Flow levels for the above-mentioned release periods shall be:

- a. Fife Brook Dam: a minimum of 700 cubic feet per second
- b. Deerfield #5 Dam: releases of 900, 1000, and 1100 cubic feet per second distributed equally over the schedule so as to average 1000 cubic feet per second.

Appendix B



Appendix C

Forest Management Guidelines

Statement of Intent

The provisions stated below establish specific guidelines for the protection of important biological and recreational resources on NEP's Deerfield Project forested lands. The intent is to allow NEP to retain flexibility in its forest management operations while ensuring that lands critical to maintaining aquatic and terrestrial wildlife habitat, recreational experiences, and long-term productivity are protected.

NEP agrees to conduct its timber management programs in accordance with the following goals:

- Protect riparian zones along rivers and lakes.
- Protect visual quality within important public viewsheds and along trails.
- Protect fragile or highly erodible soils.
- Prevent excessive nutrient depletion of low productivity soils.
- Provide appropriate application of the clearcutting reproduction method.
- Protect and manage wildlife habitat for all species that may be reasonably expected to occur on project lands.

Management Provisions

In addition to goals, objectives and the associated policies and practices outlined in the New England Electric System Companies' Forest Management Plan, dated 12/28/84, NEP shall manage lands associated with the Deerfield River Project L.P. 2323 and the additional non-project lands covered under this Settlement consistent with the following provisions:

Riparian Protection

- No commercial harvesting within 100' of shorelines associated with the East Branch and mainstem of the Deerfield River, including all reservoirs to a point below Deerfield Number 2 Station known as Stillwater Bridge. Logging operations shall comply with the Vt Wetland Rules where applicable.

- Areas within a zone of 100'-200' from the shores of the Deerfield as outlined immediately above, and areas within 50' of permanent streams, ponds or non-forested wetlands, shall be restricted from removing more than 50% of the basal area over any 10-year period and designed to leave a well distributed age class of trees which are evenly dispersed.
- These zones shall be extended 50' in width if slopes exceed an average of 35% over the entire buffer.

Visual Aesthetics

- Stands that are within the viewshed of major public use areas (rivers, lakes, hiking trails, and highways) shall be managed, to the extent possible, so as to minimize visual degradation and maintain aesthetic quality.

Soil Erosion

- No harvesting shall be performed on any SCS-classified histosols (bog soils).
- For soils listed by SCS as having severe equipment limitations due to wetness (i.e., poorly drained soils) and soils rated severe for erosion hazard, harvesting shall be limited to winter periods when the soil is frozen or utilizing a suitable alternative harvesting method and plan which prevents erosion.

Site Productivity, Nutrient Depletion

- For stands in which the site indices (SI) for existing desirable and management species are below SI-40, no whole-tree harvesting will be allowed (i.e., stem-only harvesting).
- For stands in which the site indices for existing desirable and management species are between SI-40 and SI-60, whole-tree harvesting will be limited to partial cuts removing no more than 50% of the basal area over any 10-year period and designed to leave a well distributed age class of trees which are evenly dispersed.

Wildlife Management

- Wildlife management considerations shall be included in all stand management prescriptions and shall be consistent with measures outlined in the Wildlife Enhancement Report filed as Appendix E13 of NEP's application to relicense the Deerfield River Project and with suggestions provided by State or Federal wildlife management personnel or management guides. NEP shall comply with silvicultural standards for deer wintering yards established by the State of Vermont if the harvesting occurs in a deer yard as mapped by the Vermont Department of Fish & Wildlife.

Future, Alternative, Desirable Management

- NEP shall abide and follow the above-listed provisions. However, over the 40-year term of this Settlement, unforeseen circumstances, future management techniques, public policy and alternative, desirable resource considerations may justify and require actions otherwise prevented by the above-listed provisions. NEP shall continue to manage its forest land in an ethical steward-like manner, and shall not alter this philosophy. Alternatives and exceptions to the above provisions shall only be enacted if other, presently unforeseen, desirable resource management objectives dictate such and the goals outlined in Paragraph V-E of the Settlement are met. If NEP wishes to pursue such exceptions and/or alternatives, however, it first shall amend the forest management plan and/or guidelines with the approval of the easement Holder.

- All dead woody debris (both standing and down) shall be left on-site. The following exceptions are recognized: 1) The salvage of merchantable dead material resulting from fire, insect outbreak, large-scale windthrow, or other major disturbances; 2) The removal of dead material for firewood or other purposes on an individual non-commercial basis at the discretion of NEP.

Clearcutting

- Clearcuts will be limited to a maximum of 20 acres in size for stem-only harvests and 10 acres for whole-tree harvests.
- No more than 25% of any management Block shall be clearcut over any 20-year period.
- Clearcutting is prohibited on soils rated severe for erosion hazard when slopes are greater than 25% measured over a distance of 100 feet or more.
- All clearcuts will be separated by strips at least 300' in width in which no more than 50% of the basal area may be removed over any 10-year period. Additional harvesting within the buffers may take place when regeneration of desirable species is well-established in the adjacent clearcut but no sooner than 10 years after the initial harvest.
- Definitions and Standards: A "clearcut" is any timber harvesting operation greater than 2 acres in size which results in either of the following two conditions: 1) the average residual basal area of trees over 6" in diameter is less than 30 square feet per acre, or 2) the average residual basal area of trees over 1" in diameter is greater than 30 square feet per acre and the average residual area of trees over 6" in diameter is less than 10 square feet per acre.

Regeneration will be considered well-established when 60% of 1/500-acre plots distributed across the harvest area contain at least one healthy, well-formed tree at least 5' tall.

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