

APPENDIX C
WATER QUALITY CERTIFICATE AND AGENCY CORRESPONDANCE

New York State Department of Environmental Conservation
Division of Environmental Permits, Region 6
Dulles State Office Building, 317 Washington Street, Watertown, New York 13601-3787
Phone: (315) 785-2245 • FAX: (315) 785-2242
Website: www.dec.state.ny.us



Erin M. Croffy
Commissioner

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OFFICE OF THE SECRETARY
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FEDERAL ENERGY
REGULATORY COMMISSION

November 2, 2001

Samuel S. Hirschey, Manager
Hydro Licensing & Regulatory Compliance
Erie Boulevard Hydropower, L.P.
225 Greenfield Parkway, Suite 201
Liverpool, NY 13088

RE: West Branch St. Regis River Project
6-4066-00019/00002
FERC Project #10461 and 10462
Parishville (T), St. Lawrence County

Dear Mr. Hirschey:

Enclosed is the Water Quality Certificate for the West Branch St. Regis River Hydroelectric Project. The Certificate is being issued pursuant to Section 401 of the Federal Water Pollution Control Act (33 USC 1341) and section 608.9 of the New York Department of Environmental Conservation's regulations pertaining to the Use and Protection of Waters (6 NYCRR Part 608).

Should you have any questions regarding the Water Quality Certificate, please contact me.

Sincerely,

Brian D. Fenlon

Brian D. Fenlon
Supervisor of Environmental Permits
Region 6

BDF:dli

cc: Service List
Signatories List
David Boergers, FERC
Thomas DeWitt, FERC
J. Sabattis, Orion
William Little, NYS DEC
L. Kuwik, NYS DEC
Wm. Sarbello, NYS DEC
L. Ollivett, NYS DEC
File

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DEC PERMIT NUMBER 6-4066-00019/00002	 PERMIT Under the Environmental Conservation Law (ECL)	EFFECTIVE DATE November 2, 2001
FACILITY/PROGRAM NUMBER(S)		EXPIRATION DATE Coincident with expiration date of the license issued by the Federal Energy Regulatory Commission (FERC) for FERC Project 10461 and 10462

TYPE OF PERMIT (Check All Applicable Boxes)

 New Renewal Modification Permit to Construct Permit to Operate

<input type="checkbox"/> Article 15, Title 5: Protection of Water	<input type="checkbox"/> Article 17, Titles 7, 8: SPDES	<input type="checkbox"/> Article 27, Title 9; 6NYCRR 373: Hazardous Waste Management
<input type="checkbox"/> Article 15, Title 15: Water Supply	<input type="checkbox"/> Article 19: Air Pollution Control	<input type="checkbox"/> Article 34: Coastal Erosion Management
<input type="checkbox"/> Article 15, Title 15: Water Transport	<input type="checkbox"/> Article 23, Title 27: Mined Land Reclamation	<input type="checkbox"/> Articles 1, 3, 17, 19, 27, 37; 6NYCRR 380: Radiation Control
<input type="checkbox"/> Article 15, Title 15: Long Island Wells	<input type="checkbox"/> Article 24: Freshwater Wetlands	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Article 15, Title 27: Wild, Scenic and Recreational Rivers	<input type="checkbox"/> Article 25: Tidal Wetlands	
<input checked="" type="checkbox"/> 6NYCRR 608: Water Quality Certification	<input type="checkbox"/> Article 27, Title 7; 6NYCRR 360: Solid Waste Management	

PERMIT ISSUED TO Erie Boulevard Hydropower, L.P.		TELEPHONE NUMBER (315) 413-2790
ADDRESS OF PERMITTEE 225 Greenfield Parkway, Suite 201, Liverpool, New York 13088		
CONTACT PERSON FOR PERMITTED WORK Samuel S. Hirschey, Manager - Hydro Licensing & Regulatory Compliance		TELEPHONE NUMBER (315) 413-2790
NAME AND ADDRESS OF PROJECT/FACILITY West Branch St. Regis River Hydroelectric Project		
LOCATION OF PROJECT/FACILITY West Branch St. Regis River, approximately 18 miles upstream of its confluence with the St. Regis River at Winthrop, New York		
COUNTY St. Lawrence	TOWN/VILLAGE Parishville (T)	WATERCOURSE/WETLAND NO. Allens Falls Reservoir/Parishville Reservoir/W. Branch St. Regis River
		NY/TM COORDINATES E:510.974 N:4.945.294
DESCRIPTION OF AUTHORIZED ACTIVITY Operation and maintenance of a 6.8 MW hydroelectric facility in accordance with the applicable provisions of the West Branch St. Regis River Offer of Settlement dated August 2001 and the attached conditions.		

By acceptance of this certificate, the certificate holder agrees that it will act in strict compliance with the applicable water quality sections of the Environmental Conservation Law (ECL), all applicable water quality regulations, the conditions included as part of this certificate and the applicable provisions of the West Branch St. Regis River "Offer of Settlement" dated August 9, 2001 and filed with the Federal Energy Regulatory Commission (FERC).

PERMIT ADMINISTRATOR Brian D. Fenlon	ADDRESS 317 Washington Street, Watertown, New York 13601
AUTHORIZED SIGNATURE <i>Brian D. Fenlon</i>	DATE November 2, 2001
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NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, agents, and assigns for all claims, suits, actions, damages, and costs of every name and description, arising out of or resulting from the permittee's undertaking of activities or operation and maintenance of the facility or facilities authorized by the permit in compliance or non-compliance with the terms and conditions of the permit.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-ways that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

GENERAL CONDITIONS

General Condition 1: Facility Inspection by the Department

The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

General Condition 2: Relationship of this Permit to Other Department Orders and Determinations

Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

General Condition 3: Applications for Permit Renewals or Modifications

The permittee must submit a separate written application to the Department for renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing.

The permittee must submit a renewal application at least:

- a) 180 days before expiration of permits for State Pollutant Discharge Elimination System (SPDES), Hazardous Waste Management Facilities (HWMF), major Air Pollution Control (APC) and Solid Waste Management Facilities (SWMF); and
- b) 30 days before expiration date of all other permit types.

Submission of applications for permit renewal or modification are to be submitted to:
 NYS DEC Regional Permit Administrator, Region 6
 317 Washington Street, Watertown, New York 13601, telephone: 315-785-2245

General Condition 4: Permit Modifications, Suspensions and Revocations by the Department.

The Department reserves the right to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a) the scope of the permitted activity is exceeded or a violation of any condition of the permit or provisions of the ECL and pertinent regulations if found;
- b) the permit was obtained by misrepresentation or failure to disclose relevant facts;
- c) new material information is discovered; or
- d) environmental conditions, relevant technology, or applicable law or regulation have materially changed since the permit was issued.

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**ADDITIONAL GENERAL CONDITIONS FOR ARTICLES 15 (Title 5), 24, 25, 34 and 6 NYCRR Part 608 (Protection of Water)
(Water Quality Certification)**

9. That if future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.
 10. That the State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.
 11. Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, U.S. Coast Guard, New York State Office of General Services or local government which may be required.
 12. All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.
 13. Any material dredged in the prosecution of the work herein permitted shall be removed evenly, without leaving large refuse piles, ridges across the bed of a waterway or floodplain or deep holes that may have a tendency to cause damage to navigable channels or to the banks of a waterway.
 14. There shall be no unreasonable interference with navigation by the work herein authorized.
 15. If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.
 16. If granted under 6 NYCRR Part 608, the NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306 and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.
 17. All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or his agent as part of the permit application.
- Such approved plans were prepared by _____
_____ on _____

SPECIAL CONDITIONS		
WATER QUALITY CERTIFICATION		
CERTIFICATION		
The New York State Department of Environmental Conservation (Department) hereby certifies:		
<ul style="list-style-type: none"> • the Department has reviewed the certificate holder's Application for Federal Hydroelectric License (hereafter referred to as "the Application") and all other available pertinent information, including studies submitted in support of the application and the Offer of Settlement filed with the Federal Energy Regulatory Commission (FERC) in August, 2001. • the project will comply with Sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act as amended and as implemented by the limitations, standards and criteria of the state statutory and regulatory requirements set forth in 6NYCRR Section 608.9(a); and • the project will comply with applicable New York State effluent limitations, water quality standards and thermal discharge criteria set forth in 6NYCRR Parts 700-706. 		
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SPECIAL CONDITIONS

For Article 15, Title 5 (Protection of Water)
6NYCRR 608 (Water Quality Certification)

This Water Quality Certification is issued solely for the purposes of Section 401 of the Federal Water Pollution Control Act (33 USC 1341).

CONTACTS: Except as otherwise specified, all contact with the Department concerning this certificate shall be addressed to:

New York State Department of Environmental Conservation
 Regional Permit Administrator
 317 Washington Street
 Watertown, NY 13601

Written submissions to the Department must include five (5) complete copies of the submission.

SPECIAL CONDITIONS

A. ADMINISTRATION

1. This certificate includes and incorporates the West Branch St. Regis River "Offer of Settlement" (Settlement) dated August 9, 2001.
2. **Inspections:** The project, including relevant records, is subject to inspection at reasonable hours and intervals, upon reasonable notice to the certificate holder, by an authorized representative of the Department to determine whether the applicant is complying with this certification. A copy of this certification, including the West Branch St. Regis River **Offer of Settlement** dated August 9, 2001 and the FERC license, including all maps, drawings, and special conditions, must be available for inspection by the Department during such inspections at the project.
3. **Emergencies:** With the exception of emergency provisions described in the Settlement (see subsection 2.8), the following procedures shall apply to activities conducted at the Project in response to an emergency.

Prior to commencement of emergency activities, the NYS DEC must be notified and must determine whether to grant approval. If circumstances require that emergency activities be taken immediately such that prior notice to the DEC is not possible, then the DEC must be notified by the certificate holder within 24 hours of commencement of the emergency activities. In either case, notification must be by certified mail, telegram, or other written form of communication, including fax and electronic mail. This notification must be followed within 3 weeks by submission of the following information:

- 1) a description of the action;
- 2) location map and plan of the proposed action;
- 3) reasons why the situation is an emergency

All notifications, requests for emergency authorizations and information submitted to support such requests shall be sent to the Regional Permit Administrator at the address listed above.

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SPECIAL CONDITIONS**6NYCRR 608****(Water Quality Certification)**

4. **Modifications and Revocations:** The DEC reserves the right to modify or revoke this certificate when:
- 1) the scope of the certified activity is exceeded or a violation of any condition of this certificate or provisions of the ECL and pertinent regulation is found;
 - 2) the certificate was obtained by misrepresentation or failure to disclose relevant facts;
 - 3) new material information is discovered;
 - 4) environmental conditions, relevant technology, or applicable law or regulation have materially changed since the certificate was issued.

B. OPERATING CONDITIONS

5. **Instream Flows:** The certificate holder shall maintain instream flows in accordance with the Settlement, in particular, Section 3.2.
6. **Flow Monitoring:** The certificate holder shall develop a stream flow and water level monitoring plan consistent with the Settlement in particular Section 3.3.
7. **Impoundment Fluctuations:** The Allens Falls and Parishville Reservoirs (project reservoirs) shall be operated in accordance with the Settlement (see subsection 3.1). Alternate impoundment operating plans must be reviewed and approved by NYS DEC prior to being implemented. Emergencies shall be dealt with in accordance with special conditions #3 of this certificate.
8. **Fish Protection and Downstream Fish Movement:** Fish protection provisions and downstream fish movement provisions shall be provided in accordance with the Settlement (see section 3.4).

C. PROJECT MAINTENANCE AND CONSTRUCTION

note: All matters pertaining to "Project Maintenance and Construction" shall be addressed to:

Regional Permit Administrator
New York State Department of Environmental Conservation
317 Washington Street
Watertown, NY 13601

9. **Maintenance Dredging:** The certificate holder shall install and maintain appropriate turbidity control structures while conducting any maintenance dredging activities in the intake/forebay area of the Project.

SPECIAL CONDITIONS

6NYCRR 608 (Water Quality Certification)

10. **Sediment Analysis and Disposal:** The certificate holder must sample any sediments to be disturbed or removed from the project waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol submitted to and approved by the Department prior to sampling.

Prior to dredging or other excavation, the certificate holder must secure Department approval for all disposal or interim holding locations for any sediments to be removed from the project waters.

11. **Erosion and Sediment Control:** The certificate holder shall ensure that the following erosion and sediment/contaminant control measures, at a minimum, are adhered to during routine maintenance and construction (including maintenance dredging) that may result in sediments/contaminants entering Allens Falls Reservoir, Parishville Reservoir or the West Branch St. Regis River.

1. Isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments caused by excavation, dewatering and construction activities from entering the waters of the West Branch St. Regis River.
2. Prohibit heavy construction equipment from operating below the mean high water level of project reservoirs and the West Branch St. Regis River until the work area is protected by a watertight structure and dewatered.
3. Minimize soil disturbance, grade so as to prevent or minimize erosion and provide temporary and/or permanent stabilization of all disturbed areas and stockpiles to minimize the potential for erosion and subsequent sedimentation within project reservoirs or the West Branch St. Regis River.
4. Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in construction, maintenance and operation of the project.
5. Install and maintain erosion control structures on the down slope of all disturbed areas to prevent eroded material from entering project reservoirs or the West Branch St. Regis River. Erosion control structures must be installed before commencing any activities involving soil disturbance and all erosion control structures must be maintained in a fully functional condition.
6. Ensure complete removal of all dredged/excavated material and construction debris from the bed and banks of project reservoirs/West Branch St. Regis River in the vicinity of the Project.
7. Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.

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SPECIAL CONDITIONS

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12. Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the West Branch St. Regis River or Project Reservoirs: The design of all such structures must be approved by the Department prior to installation.
13. River Flow: During any period of maintenance and/or construction activity, the certificate holder shall continuously maintain adequate flows immediately downstream of work sites consistent with the provisions of this certificate.
14. Construction Drawdowns: Whenever construction and/or maintenance activities require that the water level of project reservoirs be lowered, it shall not be drawn down more than 1 foot per hour. During refill, the water level of the impoundment shall not be allowed to rise more than 1 foot per hour.
15. Turbidity Monitoring: During maintenance or construction-related activities in or near the West Branch St. Regis River or project reservoirs, the certificate holder will monitor the turbidity of project waters at a point immediately upstream of the work area and at a point no more than 100 feet downstream from the work area. The certificate holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the upstream locations, all related construction on the project will cease until the source of the turbidity is discovered and the situation is corrected.
16. Notifications: The Regional Permit Administrator must be notified in writing at least two weeks prior to commencing any project maintenance or construction work performed under the authority of this certificate.

D. PUBLIC ACCESS AND RECREATION

17. Public access and recreational opportunities shall be provided in conformance with the Settlement.

cc: Settlement Participants
D. Boergers, FERC
T. DeWitt, FERC
Service List, FERC Project #10461 & 10462

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