116 FERC ¶62,191 UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Erie Boulevard Hydropower, L.P.

Project Nos. 5984-055 & 2474-024

ORDER AMENDING LICENSE AND ACCELERATING EEL PASSAGE SCHEDULE

(Issued September 07, 2006)

On March 15, 2006, Erie Boulevard Hydropower, L.P. (Erie) (licensee) filed a license amendment application to increase the authorized generating capacity at its Oswego Falls Project, FERC No. 5984, and to accelerate the installation of upstream eel ladder facilities at its Oswego Falls Project and its Oswego River Project, FERC No. 2474. The projects are located on the Oswego River, Oswego County, New York.

BACKGROUND

The license,¹ as amended by an order issued May 21, 1999, ² authorizes the Oswego Falls project with two developments: (1) the East development with three turbine-generator units, each rated at 1,500 kW, for a total installed capacity of 4,500 kW and a total hydraulic capacity of 4,230 cfs; and (2) the West development with five quadruplex-type turbine-generator units: Units 1 and 2, inoperable; Unit 3, modified to contain only two of the original four runners, limiting output to 400 kW, with a hydraulic capacity of 250 cfs; and Units 4 and 5, with nameplate ratings indicating a maximum capacity of 930 kW each, at 17.0 ft. of head, each with a hydraulic capacity of 560 cfs, for a total installed capacity of 2,260 kW and a total hydraulic capacity of 1,370 cfs. The project's authorized combined total installed capacity is 6,760 kW and its hydraulic capacity is 5,600 cfs.³

¹ 74 FERC ¶ 62,138 (March 15, 1996).

² 87 FERC ¶ 62,205 (May 21, 1999).

³ In its current amendment application, under Exhibit B, the licensee describes the existing hydraulic capacities as 400 cfs for Unit 3 and 930 cfs for each of Units 4 and 5. We believe this is an error because these numbers are rather the installed capacities of the subject units. However, if the licensee's intent is to change the hydraulic capacities currently authorized for those units, then it must file a separate amendment application.

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THE AMENDMENTS

1. Proposed Turbine and Generation Changes

Erie proposes to replace Unit 3 at the West development of the Oswego Falls Project by: (1) replacing the existing horizontal quadruplex-type Francis turbine unit with two new, vertical propeller units, each rated 600 kW at 16.7 feet (ft) net head and with a hydraulic capacity of 416 cfs; (2) replacing the existing horizontally-oriented Unit 3 generator with two, new vertically-oriented generators, each rated 550 kW; (3) modifying the existing intake flume floor and roof to accommodate the installation of the new units; (4) building a 24 ft wide by 38 ft long weather-proof enclosure over the new generators on the flume roof; (5) sealing the existing shaft penetration from the turbine flume to the generator room; and (5) providing miscellaneous electrical, control and protection equipment for the new units.

In its license amendment application, Erie included revised Exhibit A and two revised exhibits F-1 and F-2 drawings for the West development, which reflect general design of Unit 3 replacement.

2. Proposed Mitigation and Enhancement Measures

To mitigate for any incremental increase in fish entrainment that could result from the increase in hydraulic capacity at the project, the licensee proposes to accelerate the installation of upstream eel ladder facilities at its Oswego Falls Project and its Oswego River Project. The Oswego River Project, FERC No. 2474, is located downstream of the Oswego Falls Project and consists of the Varick, Minetto, and Fulton developments.

On February 19, 2004, the licensee filed an Offer of Settlement with the Commission regarding the licensing of the Oswego River Project and amendment of the Oswego Falls Project. The settlement included a schedule for implementation (2006-2012) and seasonal installation (June 15 through September 15) of upstream eel passage facilities at the two projects. The eel passage requirements were included in article 407 of the license for the Oswego River Project, issued on November 30, 2004,⁴ but were never included as a requirement in the Oswego Falls Project license.⁵ Nevertheless, the licensee, after consultation with the U.S. Fish and Wildlife Service (FWS), the New York State Department of Environmental Conservation (NYDEC), and New York Rivers United, has agreed to the following accelerated schedule for eel passage at the projects.

⁴ 109 FERC ¶ 62,141 (2004)

⁵ 74 FERC ¶ 62,138 (1996)

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Project No.	Development	Original Schedule	Accelerated
			Schedule
2474	Varick	30-Dec-2006	30-Dec-2006
2474	Minetto	30-Dec-2008	30-Dec-2008
2474	Fulton	30-Dec-2010	30-Dec-2008
5984	Oswego Falls	30-Dec-2012	30-Dec-2008

Table 1	
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AGENCY CONSULTATION

1. Water Quality Certification

On May 17, 2006, the licensee filed an application with the NYDEC for a Water Quality Certificate for the proposed turbine upgrades, pursuant to Section 401 of the Clean Water Act.⁶ The NYDEC issued its Section 401 certification on August 25, 2006 (Attachment A). Section 401(d) of the Clean Water Act provides that the state certification shall become a condition of the project license.

2. Threatened and Endangered Species

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973⁷ requires federal agencies to ensure their actions are not likely to jeopardize the continued existence of federally listed threatened or endangered species, or result in the destruction or adverse modification of their designated critical habitat.

Our review indicates that, except for occasional transient individuals, there are no known federally listed or proposed threatened or endangered species within the project area. Section 7 consultation under the ESA is, therefore, not required.⁸

⁶ 33 U.S.C. § 1341

⁷ 16 U.S.C. § 1536(a)

⁸ See letters from the U.S. Department of the Interior dated February 15, 1990, and June 14, 1999, to L. Cashell and T. DeWitt, Federal Energy Regulatory Commission, respectively.

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PUBLIC NOTICE

On April 17, 2006, the Commission issued a public notice of the application for the amendment and soliciting comments and motions to intervene. By letter dated April 27, 2006, the U.S. Department of the Interior (Interior) provided comments and recommended mitigative measures. On May 1, 2006, the NYDEC filed its petition for intervention. No comments or motion to intervene were filed in opposition to this amendment application.

Interior stated that it participated in consultation through the FWS and that it has no objections to the licensee's proposal. Interior further stated that the accelerated implementation of eel ladders at the Oswego River and Oswego Falls Projects as recommended by the FWS is adequate mitigation for the impacts to fish and wildlife resources that may accrue from the proposed increased hydraulic capacity at the Oswego Falls Project.

DISCUSSION AND CONCLUSIONS

1. Design Changes

Erie proposed rehabilitation of Unit 3 would change the West development's authorized installed capacities, as shown in the following Table 2.

			Table 2			
Unit No.	Existing (k)	Capacity W)	Propos	ed Capacit	ty, (kW)	Limiting Capacity
						(kW)
	Turbine	Generator		Turbine	Generator	
			Unit No.	(T)	(G)	
			3.1	600	550	550 (G)
3	405	400	3.2	600	550	550 (G)
4	937.5	930	4	937.5	930	930 (G)
5	937.5	930	5	937.5	930	930 (G)
Total	2,280	2,260	Total	3,075	2,960	2,960

Table 2

The replacement of Unit 3 at the West development with the two units would increase the authorized installed capacity by 700 kW (2@550 kW – 400 kW) and the hydraulic capacity by 582 cfs (2@416 cfs – 250 cfs). This would result in an increase of the project's total authorized generating capacity from 6,760 kW (4,500 kW at the East development + 2,260 kW at the West development) to 7,460 kW, and its hydraulic

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capacity from 5,600 cfs to 6,182 cfs, or 10.39 %. The replacement will not affect project operations or normal maximum reservoir surface elevation and there will be no ground disturbing activity at the site.

2. Environmental Analysis

Replacement of Unit 3 with the two units in the West development will be completed in the dry. All required minimum and fish passage flows will be complied with during the construction period. As such, with the exception of minor short term increases in traffic from transporting of the new equipment and workers involved in the construction project, we do not envision any major effects on area fish, wildlife, recreational or historical and cultural resources during the construction period.

During operation of the new turbine/generator units, spillage at the dam will be reduced an estimated 9 days on average; however all required flows will continue to be passed and there will be no changes to the existing run-of-river operation or water level fluctuations. Adverse impacts to wildlife, recreational or historical and cultural resources during project operation are not expected.

Because of the increase in hydraulic capacity of the project, there is the potential for an incremental increase in fish entrainment. To mitigate this potential impact, the licensee will install eel passage facilities at this project and the downstream Oswego River Project on an accelerated schedule, as we are requiring in ordering paragraph (A) of this order. This mitigation has been deemed adequate by the resource agencies.

For the reasons stated above, we conclude that issuance of this order would not constitute a major federal action significantly affecting the quality of the human environment.

3. Summary

Our environmental analysis of the license amendment application did not identify any significant impacts that would result from the Commission's approval of the application to increase the authorized installed capacity.

This order approves the amendment to increase the Oswego Falls Project's installed generating capacity from 6,760 kW to 7,460 kW. This order also approves the revised schedule for eel passage installation at the Oswego River and Oswego Falls Projects. This order requires the licensee to notify the Commission, within 30 days from the start of construction, of the date of such commencement of construction. The date

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will be used to amend license article 201 concerning the assessment of annual charges.⁹ Furthermore, this order requires the licensee to submit revised as-built Exhibits A and F, as needed, to reflect the capacity changes approved in this order, 90 days after the replacement of Unit 3 have been completed.

The Director orders:

(A) The application to amend the license to increase the project's installed capacity, as filed March 15, 2006, and the proposed accelerated schedule for eel passage installation at the Oswego River (P-2474) and Oswego Falls Project (P-5984), as shown in Table 1 in this order, are approved as provided in this order.

(B) Ordering paragraph (B)(2) of the license is revised, in part, to read as follows:

Oswego West Development

... (e) four quadruplex-type turbine-generator units: Units 1 and 2, inoperable; Units 4 and 5, with nameplate ratings indicating a maximum capacity of 930 kW each, at 17.0 ft. of head, each with a hydraulic capacity of 560 cfs; and two new vertical propeller turbine units, Units 3.1 and 3.2, (replacing Unit 3), each rated 600 kW at 16.7 ft head with a hydraulic capacity of 416 cfs, connected to two vertically-oriented generators each rated 550 kVA with 1.0 power factor; ...(See Table 2).

(C) The Exhibit A and the following revised Exhibit F drawings for the Oswego Falls West development, filed on March 15, 2006, showing general design of Unit 3 replacement, which supercede old exhibits, are approved and made part of the license:

 $^{9}See, 66 \text{ FERC } \P 61,086$, issued January 18, 1994. The order states that, "With respect to substantial changes in installed capacity that receive prior approval, the effective date for revised annual charges will be the date of the commencement of construction of the revised capacity."

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FERC Exhibit	FERC No.	Showing	Superseding
F-1	5984-13	Oswego Falls East Development;	5984-10
		Location Plan, Plan and Sections	
F-2	5984-14	Oswego Falls West Development;	5984-11
		Plan and Sections	

Table 3

(D) Within 45 days of the date of issuance of this order, the licensee shall file the approved exhibit drawings in aperture card and electronic file formats.

a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Drawing Number (i.e., P-5984-13 and P-5984-14) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., F-1, F-2), Drawing Title, and date of this order shall be typed on the upper left corner of each aperture card. See Fig. 1.



Figure 1 Sample Aperture Card Format

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional Office.

b) The licensee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional

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Office. The drawings must be identified as **(CEII) material under 18 CFR 388.113(c).** Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this order, and file extension in the following format [P-5984-13, F-1, Oswego Falls East Development; Location Plan, Plan and Sections, MM-DD-2006.TIF]. Electronic drawings shall meet the following format specification:

> IMAGERY - black & white raster file FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4 RESOLUTION – 300 dpi desired, (200 dpi min.) DRAWING SIZE FORMAT – 24" X 36" (min), 28" X 40" (max) FILE SIZE – less than 1 MB desired

(E) This order is subject to the conditions of the Water Quality Certificate that was issued on August 25, 2006, by the New York State Department of Environmental Conservation for the proposed turbine upgrades (Attachment A).

(F) The licensee shall commence construction of replacement of Unit 3 with two new units within two years from the issuance date of this order and shall complete construction within four years from the issuance date of this order.

(G) Within 30 days after the start of construction, the licensee shall notify the Commission of the date of such commencement of construction. The filing should include written documentation and photographs of all work performed since the start of construction. The date of commencement of construction will be used to amend license Article 201 for the assessment of annual charges.

(H) At least 60 days prior to the start of construction of replacement of Unit 3 with two new units, the licensee shall submit one copy of its plans and specifications design document to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI). The licensee may not begin construction until the D2SI-New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

(I) Within 90 days of the completion of construction of replacement of Unit 3 with two new units, the licensee shall file with the Commission and the Division of dam Safety and Inspections – New York regional Office, photographs of the nameplates of the turbine and generator of the new units.

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(J) Within 90 days from completion of replacement of Unit 3, the licensee must submit revised as-built Exhibits A and F, as needed, to reflect the capacity changes approved in this order.

(K) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Mohamad Fayyad Engineering Team Lead Division of Hydropower Administration and Compliance

Attachment A

Under the Environments Permittee and F	al Conservation Law (ECL)
Permittee and F	
	acility Information
Permit Issued To:	Facility:
ERIE BOULEVARD HYDROPOWER LP	OSWEGO FALLS WEST DEVELOPMENT
225 GREENFIELD PKWY STE 201	249 RIVERSIDE AVE
(215) 412 2702	FULTON, NY 13069
(313) 413-2792	
and the second	
Facility Application Contact:	
DAVID W CULLIGAN	
225 GREENFIELD PKWY STE 201	
LIVERPOOL, NY 13088	
(315) 413-2792	
Facility Principal Reference Point: NYIM-E: 3 Latitude: 4 Project Location: Oswego River in the City of Fu Authorized Activity: To operate the Oswego Fall upgrade to its existing 400 kW generating unit #3 a consists of: (1) replacing the unit's horizontal quad propeller units, each rated 800 horsepower (600 kV horizontal generator with two new vertical generat kW generating unit #3 in place in the powerhouse; accommodate the installation of the new units. The 7,360 kW, or 8.8%, and turbine hydraulic discharg	 NYIM-N: 4796.859 I3°18'56.8" Longitude: 76°25'00.5" ulton, Oswego County Is Hydro facility and to perform a maintenance at the West Side Development. The upgrade of unit #3 Hruplex Francis turbine unit with two new, vertical W) at 16.7 feet net head; (2) replacing the unit's ors, each rated 550 kW; (3) retiring the existing 400 and (4) modifying the existing intake flume floor to ese upgrades increase capacity from 6,760 kW to ge from 6,490 cfs to 6,922 cfs, or 6.6%.
Permit Au	uthorizations
Water Quality Certification - Under Section 40 Permit ID 7-3504-00067/00003	1 - Clean Water Act
New Permit Effective Date: 8/	23/2006 Expiration Date: No Exp. Date
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ermit Administrator: JOHN H MERRIMAN, JR, Deputy Region ddress: NYSDEC REGION 7 CORTLAND SUB- 1285 FISHER AVE	nal Permit Administrator OFFICE
Authorized Signature:	Date 8 /23 / 06
Distribution List	
DAVID W CULLIGAN WILLIAM G LITTLE DAN BISHOP	
MARK WOYTHAL OSEPH M EIFERT BUFFALO DISTRICT U S ARMY CORPS OF ENGINEERS	
Permit Components	
NATURAL RESOURCE PERMIT CONDITIONS	
WATER QUALITY CERTIFICATION SPECIFIC CONDITIO	N
GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED I	PERMITS
NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS	
NATURAL RESOURCE PERMIT CONDITIO Permits: WATER QUALITY CER	NS - Apply to the Following
EXPIRATION DATE Coincident with the expiration date (of the license issued by the Federal

.

- The Department has reviewed the certificate holders in Non-Capacity Electing Ameridation Application-Oswego Falls West Development", dated March, 2006 to amend the license for the Oswego Falls Project FERC No. 5984 and "Application for Section 401 Water Quality Certificate", dated May 17, 2006 (hereafter referred to as "the Application") and all other available pertinent information.
- 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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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION Facility DEC ID 7-3504-00067



3. EMERGENCIES 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 NYS DEC is not possible, then the NYS DEC must be notified by the Certificate Holder(s) within 24 hours of commencement of the emergency activities. 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.

4. PROJECT MAINTENANCE AND CONSTRUCTION

Note: All matters pertaining to "Project Maintenance and Construction" shall be addressed to: John H. Merriman, Jr.

- Deputy Regional Permit Administrator
- New York State Department of Environmental Conservation

1285 Fisher Avenue Cortland, NY 13045-1090

- (1.) <u>Maintenance Dredging</u>: The certificate holder shall curtail generation and install stoplogs or otherwise shut off flow through the turbines prior to commencing any maintenance dredging activities in the intake/forebay areas of the Project.
- (2.) <u>Sediment Analysis and Disposal:</u> 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 locations for any sediments to be removed from the project waters.

(3.) <u>Erosion and Sediment Control</u>: The certificate holder shall ensure that the following erosion and sediment controls measures, at minimum, are adhered to during routine maintenance and construction that may result in sediments and/or contaminants entering the Oswego River.

a. 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 Oswego River.

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b. Prohibit heavy construction equipment from operating below the mean high water level of the Oswego River until the work area is protected by a watertight structure and de-watered.

c. Minimize soil disturbance, grade so as to prevent or minimize erosion and provide temporary and permanent stabilization of all disturbed areas and stockpiles to minimize the potential for erosion and subsequent sedimentation within the Oswego River.

d. 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.

e. Install and maintain erosion control structures on the down slope of all disturbed areas to prevent eroded material from entering the Oswego 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.

f. Ensure complete removal of all dredged/excavated material and construction debris from the bed and banks of the Oswego River in the vicinity of the Project.

g. Ensure that all temporary fill and other materials placed in the waters of the Oswego River are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.

(4.) <u>Placement of cofferdams, construction of temporary access roads or ramps, or other</u> temporary structures which encroach upon the bed or banks of the Oswego River: The design of all such structures must be approved by the Department prior to installation.

(5.) <u>Construction Drawdowns:</u> Whenever construction and/or maintenance activities requires lowering the water level of the Project's impoundments below normal operating limits, the water level 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.

(6.) <u>River Flow:</u> During any period of maintenance and/or construction activity, the certificate holder shall continuously maintain adequate flows immediately downstream of work sites as provided for in this certificate.

(7.) <u>Turbidity Monitoring</u>. During maintenance or construction-related activities in or near the Oswego River, 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 remediated such that turbidity is returned to a pre-construction condition.

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(8.) <u>Notifications:</u> The Regional Permit Administrator must be notified in writing at least two weeks prior to commencing any work performed under the authority of this certificate.

5. Conformance With Plans All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by Kleinschmidt, Energy & Water Resource Consultants.

6. **Precautions Against Contamination of Waters** 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.

7. No Interference with Navigation There shall be no unreasonable interference with navigation by the work herein authorized.

8. State Not Liable for Damage 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.

9. State May Require Site Restoration 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.

10. State May Order Removal or Alteration of Work 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.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. Water Quality Certification 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.



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GENERAL CONDITIONS - Apply to ALL Authorized Permits:

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.

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.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit 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. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator NYSDEC REGION 7 CORTLAND SUB-OFFICE 1285 FISHER AVE CORTLAND, NY13045 -1090

4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Water Quality Certification.

5. 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. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;

Draft Permit

- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. **Permit Transfer** Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

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-ofway 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.